

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 148 Session of
2005

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WANSACZ, WASHINGTON, WOJNAROSKI, YOUNGBLOOD AND YUDICHAK,
JANUARY 31, 2005

REFERRED TO COMMITTEE ON HEALTH AND HUMAN SERVICES,
JANUARY 31, 2005

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," further providing for purposes,
10 for definitions, for powers of the Department of Health, for
11 administration and for licensure; providing for compliance
12 with staffing plans and recordkeeping, for work assignment
13 policies and for public disclosure of staffing requirements;
14 further providing for license standards, reliance on
15 accrediting agencies and Federal Government, for medical
16 assistance payments and for civil penalties; and providing
17 for private cause of action and for grants and loan programs
18 for nurse recruitment.

19 The General Assembly of the Commonwealth of Pennsylvania
20 hereby enacts as follows:

21 Section 1. Section 102 of the act of July 19, 1979 (P.L.130,
22 No.48), known as the Health Care Facilities Act, is amended to
23 read:

1 Section 102. Purposes.

2 The General Assembly finds [that] as follows:

3 (1) That the health and welfare of Pennsylvania citizens
4 will be enhanced by the orderly and economical distribution
5 of health care resources to prevent needless duplication of
6 services. Such distribution of resources will be further by
7 governmental involvement to coordinate the health care
8 system. Such a system will enhance the public health and
9 welfare by making the delivery system responsive and adequate
10 to the needs of its citizens, and assuring that new health
11 care services and facilities are efficiently and effectively
12 used; that health care services and facilities continue to
13 meet high quality standards; and, that all citizens receive
14 humane, courteous and dignified treatment. In developing such
15 a coordinated health care system, it is the policy of the
16 Commonwealth to foster responsible private operation and
17 ownership of health care facilities, to encourage innovation
18 and continuous development of improved methods of health care
19 and to aid efficient and effective planning using local
20 health systems agencies. It is the intent of the General
21 Assembly that the Department of Health foster a sound health
22 care system which provides for quality care at appropriate
23 health care facilities throughout the Commonwealth.

24 (2) That a substantial interest exists in assuring that
25 delivery of health care services to patients in health care
26 facilities located within this Commonwealth is adequate and
27 safe and that health care facilities retain sufficient
28 nursing staff so as to promote optimal health care outcomes.
29 Inadequate hospital staffing results in dangerous medical
30 errors and patient infections. Registered nurses constitute

1 the highest percentage of direct health care staff in acute
2 care facilities and have a central role in health care
3 delivery. To ensure the adequate protection and care for
4 patients in health care facilities it is essential that
5 qualified registered nurses be accessible and available to
6 meet the nursing needs of patients. Inadequate and poorly
7 monitored nurse staffing practices which result in having too
8 few registered nurses providing care jeopardize delivery of
9 quality health care services and adversely impact the health
10 of patients who enter hospitals and outpatient emergency and
11 surgical centers. The basic principles of staffing in health
12 care facilities should be focused on patient health care
13 needs and based on consideration of patient acuity levels and
14 services that need to be provided to ensure optimal outcomes.

15 While the focus of this act is on registered nurses who are
16 principal caregivers, safe staffing practices recognize the
17 importance of all health care workers in providing quality
18 patient care. The setting of staffing standards for registered
19 nurses is not to be interpreted as justifying the understaffing
20 of other critical health care workers, including licensed
21 practical nurses, social workers and unlicensed assistive
22 personnel. Indeed, the availability of these other health care
23 workers enables registered nurses to focus on the nursing care
24 functions that only registered nurses, by law, are permitted to
25 perform and thereby helps to ensure adequate staffing levels.
26 Establishing staffing standards for registered nurses in acute
27 care facilities ensures that health care facilities throughout
28 this Commonwealth operate in a manner that guarantees the public
29 safety and the delivery of quality health care services. In
30 order to meet these standards incentives must be created to

1 increase the number of registered nurses within this
2 Commonwealth.

3 Section 2. Section 103 of the act is amended by adding
4 definitions to read:

5 Section 103. Definitions.

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

9 * * *

10 "Acuity system." An established measurement instrument
11 which:

12 (1) Predicts nursing care requirements for individual
13 patients based on severity of patient illness, need for
14 specialized equipment and technology, intensity of nursing
15 interventions required and the complexity of clinical nursing
16 judgment needed to design, implement and evaluate the
17 patient's nursing care plan.

18 (2) Details the amount of nursing care needed, both in
19 number of direct care nurses and in skill mix of nursing
20 personnel required on a daily basis for each patient in a
21 nursing department or unit.

22 (3) Is stated in terms that readily can be used and
23 understood by direct-care nurses. The acuity system shall
24 take into consideration the patient care services provided
25 not only by registered nurses but also by licensed practical
26 nurses and other health care personnel.

27 "Assessment tool." A measurement system which compares the
28 staffing level in each nursing department or unit against actual
29 patient nursing care requirements in order to review the
30 accuracy of an acuity system.

1 * * *

2 "Direct-care nurse." A registered nurse who has direct
3 responsibility to oversee or directly carry out medical
4 regimens, nursing or other bedside care for one or more
5 patients.

6 "Documented staffing plan." A detailed written plan setting
7 forth the minimum number and classification of direct-care
8 nurses required in each nursing department or unit in the health
9 facility for a given year, based on reasonable projections
10 derived from the patient census and average acuity level within
11 each department or unit during the prior year, the department or
12 unit size and geography, the nature of services provided and any
13 foreseeable changes in department or unit size or function
14 during the current year.

15 "Extended care facility." A home health care agency, a
16 hospice or a long-term care nursing facility.

17 * * *

18 "Nurse" or "registered nurse." An individual licensed to
19 practice professional nursing under the act of May 22, 1951
20 (P.L.317, No.69), known as "The Professional Nursing Law."

21 "Nursing care." Care which falls within the scope of
22 practice as prescribed by State law or otherwise encompassed
23 within recognized professional standards of nursing practice,
24 including assessment, nursing diagnosis, planning, intervention,
25 evaluation and patient advocacy.

26 * * *

27 "Staffing level." The actual numerical nurse-to-patient
28 ratio within a nursing department or unit.

29 * * *

30 "Unit." A patient care component within a facility as

1 defined by the Department of Health.

2 Section 3. Section 803 of the act, added July 12, 1980
3 (P.L.655, No.136), is amended to read:

4 Section 803. Powers of the Department of Health.

5 The Department of Health shall have the power and its duty
6 shall be:

7 (1) to promulgate, after consultation with the policy
8 board, the rules and regulations necessary to carry out the
9 purposes and provisions of this chapter[; and], including
10 regulations defining terms, setting forth direct-care nurse-
11 to-patient ratios and prescribing the process for approving
12 acuity systems;

13 (2) to assure that the provisions of this chapter and
14 all rules and regulations promulgated under this chapter are
15 enforced[.]; and

16 (3) to promulgate, within six months of the effective
17 date of this paragraph, regulations providing for an
18 accessible and confidential system to report the failure to
19 comply with requirements of this chapter and public access to
20 information regarding reports of inspections, results,
21 deficiencies and corrections under this chapter.

22 Section 4. Sections 804 and 806 of the act are amended by
23 adding subsections to read:

24 Section 804. Administration.

25 * * *

26 (e) Approval of acuity system.--The department shall adopt
27 regulations prescribing the method by which it will approve a
28 facility's acuity system. The regulations may include a system
29 for class approval of acuity systems.

30 Section 806. Licensure.

1 * * *

2 (h) Staffing requirements.--Each health care facility, other
3 than an extended care facility, licensed pursuant to this act
4 shall ensure that it is staffed in a manner that provides
5 sufficient, appropriately qualified direct-care nurses in each
6 department or unit within the facility in order to meet the
7 individualized care needs of its patients and to meet all of the
8 following requirements:

9 (1) As a condition of licensing, each facility annually
10 shall submit to the department a documented staffing plan
11 together with a written certification that the staffing plan
12 is sufficient to provide adequate and appropriate delivery of
13 health care services to patients for the ensuing year and
14 does all of the following:

15 (i) meets the minimum requirements of paragraph (2);

16 (ii) meets any additional requirements of other laws
17 or regulations;

18 (iii) employs and identifies an approved acuity
19 system for addressing fluctuations in actual patient
20 acuity levels and nursing care requirements requiring
21 increased staffing levels above the minimums set forth in
22 the plan;

23 (iv) factors in other unit or department activity
24 such as discharges, transfers and admissions,
25 administrative and support tasks that are expected to be
26 done by direct-care nurses in addition to direct nursing
27 care;

28 (v) factors in the staffing level of and services
29 provided by other health care personnel in meeting
30 patient care needs, except that the staffing plan may not

incorporate or assume that nursing care functions required by licensing law or regulations or accepted standards of practice to be performed by a registered nurse are to be performed by other personnel;

(vi) identifies the assessment tool used to validate the acuity system relied on in the plan;

(vii) identifies the system which will be used to document actual staffing on a daily basis within each department or unit;

(viii) includes a written assessment of the accuracy of the prior year's staffing plan in light of actual staffing needs;

(ix) identifies each nurse staff classification referenced in the plan together with a statement setting forth minimum qualifications for each such classification; and

(x) is produced in consultation with a majority of the direct-care nurses within each department or unit or, where applicable, with the recognized or certified collective bargaining representative or representative of the direct-care nurses.

(2) The staffing plan must incorporate, at a minimum, the following direct-care nurse-to-patient ratios:

(i) One nurse to one patient: operating room and trauma emergency units.

(ii) One nurse to two patients: all critical care areas including emergency critical care and all intensive care units, labor and delivery units and postanesthesia units.

(iii) One nurse to three patients: antepartum,

emergency room, pediatrics, step-down and telemetry units.

(iv) One nurse to four patients: intermediate care nursery, and medical/surgical and acute care psychiatric units.

(v) One nurse to five patients: rehabilitation units.

(vi) One nurse to six patients: postpartum (three couplets) and well-baby nursery units.

(vii) For any units not listed above, including psychiatric units in facilities other than acute care hospitals, such direct-care nurse-to-patient ratio as established by the department.

(3) The ratios set forth in paragraph (2) shall constitute the maximum number of patients that may be assigned to each direct-care nurse in a unit during one shift. A nurse, including a nurse administrator or supervisor, who does not have principal responsibility as a direct-care nurse for a specific patient shall not be included in the calculation of the nurse-to-patient ratio.

(4) Nothing shall preclude the department from establishing and requiring a staffing plan to have higher nurse-to-patient ratios than those set forth in paragraph (2).

(5) The staffing plan may not incorporate or assume that nursing care functions required by licensing law or regulations or accepted standards of practice to be performed by a registered nurse are to be performed by other personnel.

Section 5. The act is amended by adding sections to read:

Section 806.2. Compliance with staffing plan and recordkeeping.

1 (a) Plan.--As a condition of licensing, a health care
2 facility required to have a staffing plan under section 806(h)
3 shall at all times staff in accordance with its staffing plan
4 and the staffing standards set forth under section 806(h),
5 provided that nothing herein shall be deemed to preclude any
6 such health care facility from implementing higher direct-care
7 nurse-to-patient staffing levels, nor shall the requirements set
8 forth be deemed to supersede or replace any higher requirements
9 otherwise mandated by law, regulation or contract.

10 (b) Appropriate license required.--For purposes of
11 compliance with the minimum staffing requirements standards set
12 forth under section 806(h), no nurse shall be assigned, or
13 included in the count of assigned nursing staff in a nursing
14 department or unit or a clinical area within the health facility
15 unless that nurse has an appropriate license under the
16 applicable registered nurse law, received prior orientation in
17 that clinical area sufficient to provide competent nursing care
18 to the patients in that area, and has demonstrated current
19 competence in providing care in that area. Hospitals which
20 utilize temporary nursing agencies shall have and adhere to a
21 written procedure to orient and evaluate personnel from these
22 sources to ensure adequate orientation and competency prior to
23 inclusion in the nurse-to-patient ratio.

24 (c) Daily records.--As a condition of licensure, each health
25 care facility required to have a staffing plan under section
26 806(h) shall maintain accurate daily records showing:

27 (1) The number of patients admitted, released and
28 present in each nursing department or unit within the
29 facility.

30 (2) The individual acuity level of each patient present

in each nursing department or unit within the facility.

(3) The identity and duty hours of each direct-care nurse in each nursing department or unit within the facility.

(d) Daily statistics.--As a condition of licensure, each health care facility required to have a staffing plan under section 806(h) shall maintain daily statistics, by nursing department and unit, of mortality, morbidity, infection, accident, injury and medical errors.

(e) Records retention.--All records required to be kept under this section shall be maintained for a period of seven years.

(f) Availability of records.--All records required to be kept under this section shall be made available upon request to the department and to the public, provided that information released to the public shall comply with applicable patient privacy laws and regulations.

Section 806.3. Work assignment policy.

(a) Written policy.--As a condition of licensure, each health care facility other than an extended care facility shall adopt, disseminate to direct-care nurses and comply with a written policy that meets the requirements of this section, detailing the circumstances under which a direct-care nurse may refuse a work assignment.

(b) Minimum conditions.--At a minimum, the work assignment policy shall permit a direct-care nurse to refuse an assignment for which:

(1) The nurse is not prepared by education, training or experience to safely fulfill the assignment without compromising or jeopardizing patient safety, the nurse's ability to meet foreseeable patient needs or the nurse's

1 license.

2 (2) The assignment otherwise would violate requirements
3 under this act.

4 (c) Minimum procedures.--At a minimum, the work assignment
5 policy shall contain procedures for the following:

6 (1) Reasonable requirements for prior notice to the
7 nurse's supervisor regarding the nurse's request and
8 supporting reasons for being relieved of the assignment or
9 continued duty.

10 (2) Where feasible, an opportunity for the supervisor to
11 review the specific conditions supporting the nurse's
12 request, and to decide whether to remedy the conditions, to
13 relieve the nurse of the assignment or to deny the nurse's
14 request to be relieved of the assignment or continued duty.

15 (3) A process which permits the nurse to exercise the
16 right to refuse the assignment or continued on-duty status
17 when the supervisor denies the request to be relieved if:

18 (i) the supervisor rejects the request without
19 proposing a remedy or the proposed remedy would be
20 inadequate or untimely;

21 (ii) the complaint and investigation process with a
22 regulatory agency would be untimely to address concern;
23 and

24 (iii) the employee in good faith believes that the
25 assignment meets conditions justifying refusal.

26 (4) A nurse who refuses an assignment pursuant to a work
27 assignment policy established in this section shall not be
28 deemed, by reason thereof, to have engaged in negligent or
29 incompetent action, patient abandonment or otherwise to have
30 violated applicable nursing law.

1 Section 806.4. Public disclosure of staffing requirements.

2 As a condition of licensing, a health care facility required
3 to have a staffing plan under section 806(h) shall:

4 (1) Post in a conspicuous place readily accessible to
5 the general public a notice prepared by the department
6 setting forth the mandatory provisions of this act relating
7 to staffing together with a statement of the mandatory and
8 actual daily nurse staffing levels in each nursing department
9 or unit.

10 (2) Upon request, make copies of the staffing plan filed
11 with the department available to the public.

12 (3) Make readily available to the nursing staff with a
13 department or unit, during each work shift, the following
14 information:

15 (i) A copy of the current staffing plan for that
16 department or unit.

17 (ii) Documentation of the number of direct-care
18 nurses required to be present during the shift based on
19 the approved adopted acuity system.

20 (iii) Documentation of the actual number of direct-
21 care nurses present during the shift.

22 Section 6. Section 808(a) of the act, amended December 18,
23 1992 (P.L.1602, No.179), is amended to read:

24 Section 808. Issuance of license.

25 (a) Standards.--The department shall issue a license to a
26 health care provider when it is satisfied that the following
27 standards have been met:

28 (1) that the health care provider is a responsible
29 person;

30 (2) that the place to be used as a health care facility

1 is adequately constructed, equipped, maintained and operated
2 to safely and efficiently render the services offered;

3 (3) that the health care facility provides safe and
4 efficient services which are adequate for the care, treatment
5 and comfort of the patients or residents of such facility;

6 (4) that there is substantial compliance with the rules
7 and regulations adopted by the department pursuant to this
8 act; [and]

9 (5) that a certificate of need has been issued if one is
10 necessary[.]; and

11 (6) that in the case of a health care facility required
12 to have a staffing plan under section 806(h), the facility
13 has submitted a documented staffing plan and is operating in
14 compliance with the requirements of this chapter and in
15 applicable regulations.

16 * * *

17 Section 7. Section 810 of the act is amended by adding a
18 subsection to read:

19 Section 810. Reliance on accrediting agencies and Federal
20 Government.

21 * * *

22 (d) Delegation prohibited.--This section shall not be
23 construed to permit the department to delegate any of its
24 functions with respect to the staffing requirements of this
25 chapter.

26 Section 8. Section 815(c) of the act, added July 12, 1980
27 (P.L.655, No.136), is amended to read:

28 Section 815. Effect of departmental orders.

29 * * *

30 (c) Medical assistance payments.--Orders of the department,

1 to the extent that they are sustained by the board, which fail
2 to renew a license or which suspend or revoke a license, shall
3 likewise revoke or suspend certification of the facility as a
4 medical assistance provider, and no medical assistance payment
5 for services rendered subsequent to the final order shall be
6 made during the pendency of an appeal for the period of
7 revocation or suspension without an order of supersedeas by the
8 appellate court. Any health care facility that falsifies or
9 causes to be falsified documentation required by this act shall
10 be prohibited from receiving any medical assistance payment for
11 a period of six months subsequent to the final order of
12 violation.

13 Section 9. Section 817(b) of the act, amended December 18,
14 1992 (P.L.1602, No.179), is amended and the section is amended
15 by adding subsections to read:

16 Section 817. Actions against violations of law, rules and
17 regulations.

18 * * *

19 (b) Civil penalty.--

20 (1) Any person, regardless of whether such person is a
21 licensee, who has committed a violation of any of the
22 provisions of this chapter or of any rule or regulation
23 issued pursuant thereto, including failure to correct a
24 serious licensure violation (as defined by regulation) within
25 the time specified in a deficiency citation, may be assessed
26 a civil penalty by an order of the department of up to \$500
27 for each deficiency for each day that each deficiency
28 continues[.], provided that a health care facility required
29 to have a staffing plan under section 806(h) that fails to
30 comply with the requirements of section 806.2(c) and

1 reporting requirements of this act may be assessed a civil
2 penalty by an order of the department of up to \$10,000 for
3 each day of noncompliance. Civil penalties shall be collected
4 from the date the facility receives notice of the violation
5 until the department confirms correction of such violation.

6 (2) Any personal or health care facility that fails to
7 report or falsifies information, or coerces, threatens,
8 intimidates or otherwise influences another person to fail to
9 report or to falsify information required to be reported
10 under this chapter may be assessed a penalty of up to \$10,000
11 for each such incident.

12 * * *

13 (e) Discharge or discrimination.--No person shall discharge,
14 discriminate or in any manner retaliate against any employee
15 because such employee has filed any complaint or instituted or
16 caused to be instituted any proceeding under or related to this
17 act or has testified or is about to testify in any such
18 proceeding or because of the exercise by such employee on behalf
19 of himself or others of any right afforded by this act.

20 (f) Private right of action.--Any health care facility other
21 than an extended care facility which violates the rights of an
22 employee set forth in subsection (e) or under an adopted work
23 assignment policy under section 806.3 may be held liable to such
24 employee in an action brought in a court of competent
25 jurisdiction for such legal or equitable relief as may be
26 appropriate to effectuate the purposes of this act, including,
27 but not limited to, reinstatement, promotion, lost wages and
28 benefits, and compensatory and consequential damages resulting
29 from the violations together with an equal amount in liquidated
30 damages. The court in such action shall, in addition to any

judgment awarded to the plaintiffs, award reasonable attorney fees and costs of action to be paid by the defendants. The employee's right to institute a private action is not limited by any other rights granted under this act.

Section 10. The act is amended by adding a section to read:
Section 902.2. Nurse recruitment.

(a) Nurse recruitment grant program.--

(1) The department shall award grants as provided herein to increase nursing education opportunities.

(2) Eligible entities to whom grants may be provided include the following: a health care facility, a labor organization representing registered nurses in this Commonwealth, or an approved nursing education program for the preparation of professional registered nurses in accordance with the requirements of the professional nursing law.

(3) Grants shall be available to:

(i) Support outreach programs at elementary and secondary schools that inform guidance counselors and students of education opportunities regarding nursing.

(ii) Create demonstration programs to provide mentors for high school students designed to encourage them to enter a career in professional nursing.

(iii) Provide scholarships and/or tuition reimbursement to Pennsylvania residents from diverse racial and ethnic backgrounds who want to become registered nurses. To be eligible for a scholarship or tuition reimbursement, students shall meet designated academic criteria and be accepted into an approved nursing program. Scholarships and/or tuition

1 reimbursement may be conditioned on a commitment of paid
2 service up to three years. Preference for scholarships
3 shall be given to students who are from under-represented
4 ethnic and minority backgrounds or who are otherwise
5 under-represented in the profession of nursing. Students
6 who are awarded the scholarships owe the hospital three
7 years of service at full pay or face a penalty of treble
8 the scholarship amount plus interest.

9 (b) Career ladder grant program.--

10 (1) The department shall award grants to health care
11 facilities to assist in creating career ladder programs that
12 will encourage employees to obtain the education required to
13 become registered nurses. In making such awards, preference
14 shall be given to health care facilities that have active
15 labor management cooperative programs.

16 (2) Grants provided under this subsection shall be used
17 to cover costs incurred by employees of the health care
18 facility who enroll in an approved program to become
19 registered nurses, including tuition costs, work release time
20 and dependent care costs.

21 (c) Nursing facility loan program.--The department shall
22 establish and implement a grant program designed to encourage
23 health care facilities to loan professional nursing staff to
24 serve as faculty at approved nursing schools and/or nursing
25 education programs.

26 Section 11. This act shall take effect as follows:

27 (1) The addition of section 902.2 of the act shall take
28 effect in 90 days.

29 (2) The remainder of this act shall take effect in one
30 year.