

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 147 Session of 2009

INTRODUCED BY SOLOBAY, BELFANTI, BEYER, BISHOP, BRENNAN,
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MICOZZIE, READSHAW, SIPTROTH AND WHITE, JANUARY 30, 2009

REFERRED TO COMMITTEE ON HEALTH AND HUMAN SERVICES, JANUARY 30,
2009

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:

24 Section 102. Purposes.

1 The General Assembly finds [that] as follows:

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

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

care facilities and have a central role in health care delivery. To ensure the adequate protection and care for patients in health care facilities it is essential that qualified registered nurses be accessible and available to meet the nursing needs of patients. Inadequate and poorly monitored nurse staffing practices which result in having too few registered nurses providing care jeopardize delivery of quality health care services and adversely impact the health of patients who enter hospitals and outpatient emergency and surgical centers. The basic principles of staffing in health care facilities should be focused on patient health care needs and based on consideration of patient acuity levels and services that need to be provided to ensure optimal outcomes.

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

1 Commonwealth.

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

4 Section 103. Definitions.

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

8 * * *

9 "Acuity system." An established measurement instrument that:

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

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

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

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

29 * * *

30 "Direct-care nurse." A registered nurse who has direct

responsibility to oversee or directly carry out medical regimens, nursing or other bedside care for one or more patients.

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

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

* * *

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

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

* * *

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

* * *

"Unit." A patient care component within a facility as defined by the Department of Health.

Section 3. Section 803 of the act, added July 12, 1980 (P.L.

1 655, No.136), is amended to read:

2 Section 803. Powers of the Department of Health.

3 The Department of Health shall have the power and its duty
4 shall be:

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

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

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

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

22 Section 804. Administration.

23 * * *

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

28 Section 806. Licensure.

29 * * *

30 (h) Staffing requirements.--Each health care facility, other

than an extended care facility, licensed pursuant to this act
shall ensure that it is staffed in a manner that provides
sufficient, appropriately qualified direct-care nurses in each
department or unit within the facility in order to meet the
individualized care needs of its patients and to meet all of the
following requirements:

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

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

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

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

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

(v) factors in the staffing level of and services
provided by other health care personnel in meeting
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 that 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 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

1 nursery, and medical/surgical and acute care psychiatric
2 units.

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

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

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

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

18 (4) Nothing shall preclude the department from
19 establishing and requiring a staffing plan to have higher
20 nurse-to-patient ratios than those set forth in paragraph
21 (2).

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

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

27 Section 806.5. Compliance with staffing plan and recordkeeping.

28 (a) Plan.--As a condition of licensing, a health care
29 facility required to have a staffing plan under section 806(h)
30 shall at all times staff in accordance with its staffing plan

1 and the staffing standards set forth under section 806(h),
2 provided that nothing herein shall be deemed to preclude the
3 health care facility from implementing higher direct-care nurse-
4 to-patient staffing levels, nor shall the requirements set forth
5 be deemed to supersede or replace any higher requirements
6 otherwise mandated by law, regulation or contract.

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

21 (c) Daily records.--As a condition of licensure, each health
22 care facility required to have a staffing plan under section
23 806(h) shall maintain accurate daily records showing:

24 (1) The number of patients admitted, released and
25 present in each nursing department or unit within the
26 facility.

27 (2) The individual acuity level of each patient present
28 in each nursing department or unit within the facility.

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

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

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

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

14 Section 806.6. Work assignment policy.

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

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

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

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

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

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

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

12 (3) A process that permits the nurse to exercise the
13 right to refuse the assignment or continued on-duty status
14 when the supervisor denies the request to be relieved if:

15 (i) the supervisor rejects the request without
16 proposing a remedy or the proposed remedy would be
17 inadequate or untimely;

18 (ii) the complaint and investigation process with a
19 regulatory agency would be untimely to address concern;
20 and

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

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

28 Section 806.7. Public disclosure of staffing requirements.

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

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

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

9 (3) Make readily available to the nursing staff with a
10 department or unit, during each work shift, the following
11 information:

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

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

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

19 Section 6. Section 808(a) of the act, amended December 18,
20 1992 (P.L.1602, No.179), is amended to read:

21 Section 808. Issuance of license.

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

25 (1) that the health care provider is a responsible
26 person;

27 (2) that the place to be used as a health care facility
28 is adequately constructed, equipped, maintained and operated
29 to safely and efficiently render the services offered;

30 (3) that the health care facility provides safe and

1 efficient services which are adequate for the care, treatment
2 and comfort of the patients or residents of such facility;

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

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

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

13 * * *

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

16 Section 810. Reliance on accrediting agencies and Federal
17 Government.

18 * * *

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

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

25 Section 815. Effect of departmental orders.

26 * * *

27 (c) Medical assistance payments.--Orders of the department,
28 to the extent that they are sustained by the board, which fail
29 to renew a license or which suspend or revoke a license, shall
30 likewise revoke or suspend certification of the facility as a

1 medical assistance provider, and no medical assistance payment
2 for services rendered subsequent to the final order shall be
3 made during the pendency of an appeal for the period of
4 revocation or suspension without an order of supersedeas by the
5 appellate court. Any health care facility that falsifies or
6 causes to be falsified documentation required by this act shall
7 be prohibited from receiving any medical assistance payment for
8 a period of six months subsequent to the final order of
9 violation.

10 Section 9. Section 817(b) of the act, amended December 18,
11 1992 (P.L.1602, No.179), is amended and the section is amended
12 by adding subsections to read:

13 Section 817. Actions against violations of law, rules and
14 regulations.

15 * * *

16 (b) Civil penalty.--

17 (1) Any person, regardless of whether such person is a
18 licensee, who has committed a violation of any of the
19 provisions of this chapter or of any rule or regulation
20 issued pursuant thereto, including failure to correct a
21 serious licensure violation (as defined by regulation) within
22 the time specified in a deficiency citation, may be assessed
23 a civil penalty by an order of the department of up to \$500
24 for each deficiency for each day that each deficiency
25 continues[.], provided that a health care facility required
26 to have a staffing plan under section 806(h) that fails to
27 comply with the requirements of section 806.5(c) and
28 reporting requirements of this act may be assessed a civil
29 penalty by an order of the department of up to \$10,000 for
30 each day of noncompliance. Civil penalties shall be collected

1 from the date the facility receives notice of the violation
2 until the department confirms correction of such violation.

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

9 * * *

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

17 (f) Private right of action.--Any health care facility other
18 than an extended care facility that violates the rights of an
19 employee set forth in subsection (e) or under an adopted work
20 assignment policy under section 806.6 may be held liable to the
21 employee in an action brought in a court of competent
22 jurisdiction for the legal or equitable relief as may be
23 appropriate to effectuate the purposes of this act, including,
24 but not limited to, reinstatement, promotion, lost wages and
25 benefits and compensatory and consequential damages resulting
26 from the violations together with an equal amount in liquidated
27 damages. The court in the action shall, in addition to any
28 judgment awarded to the plaintiffs, award reasonable attorney
29 fees and costs of action to be paid by the defendants. The
30 employee's right to institute a private action is not limited by

1 any other rights granted under this act.

2 Section 10. The act is amended by adding a section to read:

3 Section 902.2. Nurse recruitment.

4 (a) Nurse recruitment grant program.--

5 (1) The department shall award grants as provided in
6 this section to increase nursing education opportunities.

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

14 (3) Grants shall be available to:

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

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

21 (iii) Provide scholarships and/or tuition
22 reimbursement to Pennsylvania residents from diverse
23 racial and ethnic backgrounds who want to become
24 registered nurses. To be eligible for a scholarship or
25 tuition reimbursement, students shall meet designated
26 academic criteria and be accepted into an approved
27 nursing program. Scholarships and/or tuition
28 reimbursement may be conditioned on a commitment of paid
29 service up to three years. Preference for scholarships
30 shall be given to students who are from underrepresented

1 ethnic and minority backgrounds or who are otherwise
2 under-represented in the profession of nursing. Students
3 who are awarded the scholarships owe the hospital three
4 years of service at full pay or face a penalty of treble
5 the scholarship amount plus interest.

6 (b) Career ladder grant program.--

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

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

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

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

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

26 (2) This section shall take effect immediately.

27 (3) The remainder of this act shall take effect in one
28 year.