
THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 438 Session of
2011

INTRODUCED BY LEACH, KITCHEN, FONTANA, BREWSTER, BOSCOLA, COSTA,
STACK, TARTAGLIONE, YUDICHAK AND FERLO, FEBRUARY 7, 2011

REFERRED TO PUBLIC HEALTH AND WELFARE, FEBRUARY 7, 2011

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.

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
15 chapter to read:

16 CHAPTER 8-A

17 HOSPITAL PATIENT PROTECTION

18 Section 831-A. Scope of chapter.

19 This chapter provides for hospital patient protection.

20 Section 832-A. Purpose.

21 The General Assembly finds that:

22 (1) Health care services are becoming more complex, and

1 it is increasingly difficult for patients to access
2 integrated services.

3 (2) Competent, safe, therapeutic and effective patient
4 care is jeopardized because of staffing changes implemented
5 in response to market-driven managed care.

6 (3) To ensure effective protection of patients in acute
7 care settings, it is essential that qualified direct care
8 registered nurses be accessible and available to meet the
9 individual needs of patients at all times.

10 (4) To ensure the health and welfare of Pennsylvania
11 citizens, mandatory hospital direct care professional nursing
12 practice standards and professional practice protections must
13 be established to assure that hospital nursing care is
14 provided in the exclusive interests of patients.

15 (5) Direct care registered nurses have a fiduciary duty
16 to assigned patients and necessary duty and right of patient
17 advocacy and collective patient advocacy to satisfy
18 professional fiduciary obligations.

19 (6) The basic principles of staffing in hospital
20 settings should be based on the individual patient's care
21 needs, the severity of the condition, services needed and the
22 complexity surrounding those services.

23 (7) Current unsafe hospital direct care registered nurse
24 staffing practices have resulted in adverse patient outcome.

25 (8) Mandating adoption of uniform, minimum, numerical
26 and specific registered nurse-to-patient staffing ratios by
27 licensed hospital facilities is necessary for competent,
28 safe, therapeutic and effective professional nursing care and
29 for retention and recruitment of qualified direct care
30 registered nurses.

1 (9) Direct care registered nurses must be able to
2 advocate for their patients without fear of retaliation from
3 their employer.

4 (10) Whistleblower protections that encourage registered
5 nurses and patients to notify government and private
6 accreditation entities of suspected unsafe patient
7 conditions, including protection against retaliation for
8 refusing unsafe patient care assignments by competent
9 registered nurse staff, will greatly enhance the health,
10 welfare and safety of patients.

11 Section 833-A. Definitions.

12 The following words and phrases when used in this chapter
13 shall have the meaning given to them in this section unless the
14 context clearly indicates otherwise:

15 "Acuity-based patient classification system" or "system." A
16 standardized set of criteria based on scientific data that acts
17 as a measurement instrument used to predict registered nursing
18 care requirements for individual patients based on:

19 (1) The severity of patient illness.

20 (2) The need for specialized equipment and technology.

21 (3) The intensity of required nursing interventions.

22 (4) The complexity of clinical nursing judgment required
23 to design, implement and evaluate the patient's nursing care
24 plan consistent with professional standards.

25 (5) The ability for self-care, including motor, sensory
26 and cognitive deficits.

27 (6) The need for advocacy intervention.

28 (7) The licensure of the personnel required for care.

29 (8) The patient care delivery system.

30 (9) The unit's geographic layout.

1 (10) Generally accepted standards of nursing practice,
2 as well as elements reflective of the unique nature of the
3 acute care hospital's patient population.

4 The system determines the additional number of direct care
5 registered nurses and other licensed and unlicensed nursing
6 staff the hospital must assign, based on the independent
7 professional judgment of the direct care registered nurse, to
8 meet the individual patient needs at all times.

9 "Artificial life support." A system that uses medical
10 technology to aid, support or replace a vital function of the
11 body that has been seriously damaged.

12 "Clinical judgment." The application of a direct care
13 registered nurse's knowledge, skill, expertise and experience in
14 making independent decisions about patient care.

15 "Clinical supervision." The assignment and direction of
16 patient care tasks required in the implementation of nursing
17 care for a patient to other licensed nursing staff or to
18 unlicensed staff by a direct care registered nurse in the
19 exclusive interests of the patient.

20 "Competence." The current documented, demonstrated and
21 validated ability of a direct care registered nurse to act and
22 integrate the knowledge, skills, abilities and independent
23 professional judgment that underpin safe, therapeutic and
24 effective patient care and which ability is based on the
25 satisfactory performance of:

26 (1) The statutorily recognized duties and
27 responsibilities of the registered nurses as provided under
28 the laws of this Commonwealth.

29 (2) The standards required under this chapter which are
30 specific to each hospital unit.

1 "Critical access hospital." A health facility designated
2 under a Medicare rural hospital flexibility program established
3 by the Commonwealth and as defined in section 1861(mm) of the
4 Social Security Act (49 Stat. 620, 42 U.S.C. § 1395x(mm)).

5 "Critical care unit" or "intensive care unit." A nursing
6 unit of an acute care hospital that is established to safeguard
7 and protect patients whose severity of medical conditions
8 require continuous monitoring and complex interventions by
9 direct care registered nurses and whose restorative measures
10 require complex monitoring, intensive intricate assessment,
11 evaluation, specialized rapid intervention and the education and
12 teaching of the patient, the patient's family or other
13 representatives by a competent and experienced direct care
14 registered nurse. The term includes an intensive care unit, a
15 burn center, a coronary care unit or an acute respiratory unit.

16 "Direct care registered nurse" or "direct care professional
17 nurse." A registered nurse who:

18 (1) Is currently licensed by the Pennsylvania Board of
19 Nursing to engage in professional nursing with documented
20 clinical competence as defined in the act of May 22, 1951
21 (P.L. 317, No. 69), known as The Professional Nursing Law.

22 (2) Has accepted a direct, hands-on patient care
23 assignment to implement medical and nursing regimens and
24 provide related clinical supervision of patient care while
25 exercising independent professional judgment at all times in
26 the interests of a patient.

27 "Hospital." An entity located in this Commonwealth that is
28 licensed as a hospital under this act. The term includes a
29 critical access and long-term acute care hospital.

30 "Hospital unit" or "clinical patient care area." An

1 intensive care or critical care unit, a burn unit, a labor and
2 delivery room, antepartum and postpartum, a newborn nursery, a
3 post-anesthesia service area, an emergency department, an
4 operating room, a pediatric unit, a step-down or intermediate
5 care unit, a specialty care unit, a telemetry unit, a general
6 medical/surgical care unit, a psychiatric unit, a rehabilitation
7 unit or a skilled nursing facility unit.

8 "Long-term acute care hospital." A hospital or health care
9 facility that specializes in providing acute care to medically
10 complex patients with an anticipated length of stay of more than
11 25 days. The term includes a free-standing and a hospital-
12 within-hospital model of a long-term acute care facility.

13 "Medical/surgical unit." A unit that:

14 (1) Is established to safeguard and protect patients
15 whose severity of illness, including all comorbidities,
16 restorative measures and level of nursing intensity requires
17 continuous care through direct observation by a direct care
18 registered nurse, monitoring, multiple assessments,
19 specialized interventions, evaluations and the education or
20 teaching of a patient's family or other representatives by a
21 competent and experienced direct care registered nurse.

22 (2) May include patients requiring less than intensive
23 care or step-down care and patients receiving 24-hour
24 inpatient general medical care, post-surgical care or both.

25 (3) May include mixed patient populations of diverse
26 diagnoses and diverse age groups, excluding pediatric
27 patients.

28 "Patient assessment." The direct care utilization by a
29 registered nurse of critical thinking, which is the
30 intellectually disciplined process of actively and skillfully

1 interpreting, applying, analyzing, synthesizing and evaluating
2 data obtained through the registered nurse's direct care, direct
3 observation and communication with others.

4 "Professional judgment." The educated, informed and
5 experienced process that a direct care registered nurse
6 exercises in forming an opinion and reaching a clinical
7 decision, in a patient's best interest, based upon analysis of
8 data, information and scientific evidence.

9 "Rehabilitation unit." A functional clinical unit for the
10 provision of those rehabilitation services that restore an ill
11 or injured patient to the highest level of self-sufficiency or
12 gainful employment of which the patient is capable in the
13 shortest possible time, compatible with the patient's physical,
14 intellectual and emotional or psychological capabilities and in
15 accordance with planned goals and objectives.

16 "Skilled nursing facility." A functional clinical unit that:

17 (1) Provides skilled nursing care and supportive care to
18 patients whose primary need is for the availability of
19 skilled nursing care on a long-term basis and who are
20 admitted after at least a 48-hour period of continuous
21 inpatient care.

22 (2) Provides at least the following: medical, nursing,
23 dietary, pharmaceutical services and an activity program.

24 "Specialty care unit." A unit that:

25 (1) Is established to safeguard and protect patients
26 whose severity of illness, including all comorbidities,
27 restorative measures and level of nursing intensity requires
28 continuous care through direct observation by a direct care
29 registered nurse, monitoring, multiple assessments,
30 specialized interventions, evaluations and the education and

1 teaching of a patient's family or other representatives by a
2 competent and experienced direct care registered nurse.

3 (2) Provides intensity of care for a specific medical
4 condition or a specific patient population.

5 (3) Is more comprehensive for the specific condition or
6 disease process than that which is required on a
7 medical/surgical unit and is not otherwise covered by the
8 definitions in this section.

9 "Step-down unit." A unit established:

10 (1) To safeguard and protect patients whose severity of
11 illness, including all comorbidities, restorative measures
12 and level of nursing intensity requires intermediate
13 intensive care through direct observation by the direct care
14 registered nurse, monitoring, multiple assessments,
15 specialized interventions, evaluations and the education and
16 teaching of the patient's family or other representatives by
17 a competent and experienced direct care registered nurse.

18 (2) To provide care to patients with moderate or
19 potentially severe physiologic instability requiring
20 technical support but not necessarily artificial life
21 support.

22 "Technical support." Specialized equipment and direct care
23 registered nurses providing for invasive monitoring, telemetry
24 and mechanical ventilation for the immediate amelioration or
25 remediation of severe pathology for those patients requiring
26 less care than intensive care, but more care than that which is
27 required from medical/surgical care.

28 "Telemetry unit." A unit that:

29 (1) Is established to safeguard and protect patients
30 whose severity of illness, including all comorbidities,

1 restorative measures and level of nursing intensity requires
2 intermediate intensive care through direct observation by a
3 direct registered nurse, monitoring, multiple assessments,
4 specialized interventions, evaluations and the education and
5 teaching of a patient's family or other representatives by a
6 competent and experienced direct care registered nurse.

7 (2) Is designated for the electronic monitoring,
8 recording, retrieval and display of cardiac electrical
9 signals.

10 Section 834-A. Hospital nursing practice standard.

11 (a) Professional obligation and right.--By virtue of their
12 professional license and ethical obligations, all registered
13 nurses have a duty and right to act and provide care in the
14 exclusive interests of a patient and to act as the patient's
15 advocate, as circumstances require, in accordance with the
16 provision described in section 836-A.

17 (b) Acceptance of patient care assignments.--

18 (1) A direct care registered nurse shall provide
19 competent, safe, therapeutic and effective nursing care to
20 assigned patients.

21 (2) As a condition of licensure, a health care facility
22 shall adopt, disseminate to direct care nurses and comply
23 with a written policy that details the circumstances under
24 which a direct care nurse may refuse a work assignment.

25 (3) At a minimum, the policy shall permit a direct care
26 nurse to refuse a patient assignment for which:

27 (i) the nurse does not have the necessary knowledge,
28 judgment, skills and ability to provide the required care
29 without compromising or jeopardizing the patient's
30 safety, the nurse's ability to meet foreseeable patient

1 needs or the nurse's license; and

2 (ii) the assignment otherwise would violate
3 requirements under this chapter.

4 (4) At a minimum, the policy shall permit a direct care
5 nurse to assess an order initiated by a physician or legally
6 authorized health care professional before implementation to
7 determine if the order is:

8 (i) in the best interests of the patient;

9 (ii) initiated by a person legally authorized to
10 issue the order; and

11 (iii) in accordance with applicable law and
12 regulation governing nursing care.

13 (5) At a minimum, the work assignment policy shall
14 contain procedures for the following:

15 (i) Reasonable requirements for prior notice to the
16 nurse's supervisor regarding the nurse's request and
17 supporting reasons for being relieved of the assignment,
18 continued duty or implementation of an order.

19 (ii) Where feasible, an opportunity for the
20 supervisor to review the specific conditions supporting
21 the nurse's request and to decide whether to:

22 (A) remedy the conditions;

23 (B) to relieve the nurse of the assignment or
24 order; or

25 (C) deny the nurse's request to be relieved of
26 the assignment, continued duty or implementation of
27 an order.

28 (iii) A process that permits the nurse to exercise
29 the right to refuse the assignment, continued on-duty
30 status or implementation of an order when the supervisor

1 denies the request to be relieved if:

2 (A) The supervisor rejects the request without
3 proposing a remedy or the proposed remedy would be
4 inadequate or untimely.

5 (B) The complaint and investigation process with
6 a regulatory agency would be untimely to address
7 concern.

8 (C) The employee, in good faith, believes that
9 the assignment or implementation of an order meets
10 conditions justifying refusal.

11 (iv) A nurse who refuses an assignment or
12 implementation of an order under a work assignment policy
13 established in this section shall not be deemed, by
14 reason thereof, to have engaged in negligent or
15 incompetent action, patient abandonment or otherwise to
16 have violated applicable nursing law.

17 Section 835-A. Professional duty and right of patient advocacy.

18 A registered nurse has the professional obligation, and
19 therefore the right, to act as a patient's advocate as
20 circumstances require by:

21 (2) initiating action to improve health care or to
22 change decisions or activities which in the professional
23 judgment of the direct care registered nurse are against the
24 interests or wishes of the patient; or

25 (3) giving the patient the opportunity to make informed
26 decisions about health care before it is provided.

27 Section 836-A. Free speech.

28 (a) Prohibition against discharge or retaliation for
29 whistleblowing.--A hospital or other health care facility shall
30 not discharge from duty or otherwise retaliate against a direct

1 care registered nurse or other health care professional
2 responsible for patient care who reports unsafe practices or
3 violation of policy, regulation, rule or law.

4 (b) Rights guaranteed as essential to effective patient
5 advocacy.--

6 (1) A direct care registered nurse or other health care
7 professional or worker responsible for patient care in a
8 hospital shall enjoy the right of free speech and shall be
9 protected in the exercise of that right as provided in this
10 section, both during working hours and during off-duty hours.

11 (2) The right of free speech protected by this section
12 is a necessary incident of the professional nurse duty of
13 patient advocacy and is essential to protecting the health
14 and safety of hospital patients and of the people of this
15 Commonwealth.

16 (c) Protected speech.--

17 (1) The "free speech" protected by this section
18 includes, without limitation, any type of spoken, gestured,
19 written, printed or electronically communicated expression
20 concerning any matter related to or affecting competent,
21 safe, therapeutic and effective nursing care by direct care
22 registered nurses or other health care professionals and
23 workers at the hospital facility, at facilities within large
24 health delivery systems or corporate chains which include the
25 hospital, or more generally within the health care industry.

26 (2) The content of speech protected by this section
27 includes, without limitation, the facts and circumstances of
28 particular events, patient care practices, institutional
29 actions, policies or conditions which may facilitate or
30 impede competent, safe, therapeutic and effective nursing

1 practice and patient care, adverse patient outcomes or
2 incidents, sentinel and reportable events and arguments in
3 support of or against hospital policies or practices relating
4 to the delivery of nursing care.

5 (3) Protected speech under this section includes the
6 reporting, internally, externally or publicly, of actions,
7 conduct, events, practices or other matters that are believed
8 to constitute:

9 (i) a violation of Federal, State or local laws or
10 regulations;

11 (ii) a breach of applicable codes of professional
12 ethics, including the professional and ethical
13 obligations of direct care registered nurses;

14 (iii) matters which, in the independent judgment of
15 the reporting direct care registered nurse, are
16 appropriate or required for disclosure in furtherance and
17 support of the nurse's exercise of patient advocacy
18 duties to improve health care or change decisions or
19 activities which, in the professional judgment of the
20 direct care registered nurse, are against the interests
21 or wishes of the patient or to ensure that the patient is
22 afforded a meaningful opportunity to make informed
23 decisions about health care before it is provided; or

24 (iv) concern matters as described in subparagraph
25 (iii) made in aid and support of the exercise of patient
26 advocacy duties of direct care registered nurse
27 colleagues.

28 (d) Nondisclosure of confidential information.--Nothing in
29 this section shall be construed to authorize disclosure of
30 private and confidential patient information except where such

1 disclosure is:

2 (1) required by law;

3 (2) compelled by proper legal process;

4 (3) consented to by the patient; or

5 (4) provided in confidence to regulatory or

6 accreditation agencies or other government entities for

7 investigatory purposes or under formal or informal complaints

8 of unlawful or improper practices for purposes of achieving

9 corrective and remedial action.

10 (e) Duty of patient advocacy.--Engaging in free speech

11 activity as described in this section constitutes an exercise of

12 the direct care registered nurse's duty and right of patient

13 advocacy. The subject matter of free speech activity as

14 described in this section is presumed to be a matter of public

15 concern, and the disclosures protected under this section are

16 presumed to be in the public interest.

17 Section 837-A. Protected rights.

18 (a) General rule.--Any person shall have the right to:

19 (1) Oppose policies, practices or actions of any

20 hospital or other medical facility that are alleged to

21 violate, breach or fail to comply with any provision of this

22 chapter;

23 (2) Cooperate, provide evidence, testify or otherwise

24 support or participate in any investigation or complaint

25 proceeding under sections 845-A and 846-A.

26 (b) Right to file complaint.--

27 (1) A patient of a hospital or other medical facility

28 aggrieved by the hospital's or facility's interference with

29 the full and free exercise of patient advocacy duties by a

30 direct care registered nurse shall have the right to make or

1 file a complaint, cooperate, provide evidence, testify or
2 otherwise support or participate in any investigation or
3 complaint proceeding under sections 845-A and 846-A.

4 (2) A direct care registered nurse of a hospital or
5 other medical facility aggrieved by the hospital's or
6 facility's interference with the full and free exercise of
7 patient advocacy duties shall have the right to make or file
8 a complaint, cooperate, provide evidence, testify or
9 otherwise support or participate in any investigation or
10 complaint proceeding under sections 845-A and 846-A.

11 Section 838-A. Interference with rights and duties of free
12 speech and patient advocacy prohibited.

13 No hospital or other medical facility employer or its agents
14 may:

15 (1) interfere with, restrain, coerce, intimidate or deny
16 the exercise of or the attempt to exercise, by any person of
17 any right provided or protected under this chapter; or

18 (2) discriminate or retaliate against any person for
19 opposing any policy, practice or action of the hospital or
20 other medical facility which is alleged to violate, breach or
21 fail to comply with any provisions of this chapter.

22 Section 839-A. No retaliation or discrimination for protected
23 actions.

24 No hospital or other medical facility employer may
25 discriminate or retaliate in any manner against any patient,
26 employee or contract employee of the hospital or other medical
27 facility or any other person because that person has:

28 (1) presented a grievance or complaint or has initiated
29 or cooperated in any investigation or proceeding of any
30 governmental entity, regulatory agency or private

1 accreditation body; or

2 (2) made a civil claim or demand or filed an action
3 relating to the care, services or conditions of the hospital
4 or of any affiliated or related facilities.

5 Section 840-A. Direct care registered nurse-to-patient staffing
6 ratios.

7 (a) General requirements.--A hospital shall provide minimum
8 staffing by direct care registered nurses in accordance with the
9 general requirements of this subsection and the clinical unit or
10 clinical patient care area direct care registered nurse-to-
11 patient ratios specified in subsection (b). Staffing for patient
12 care tasks not requiring a direct care registered nurse is not
13 included within these ratios and shall be determined under an
14 acuity-based patient classification system, this section and
15 section 841-A. The requirements are as follows:

16 (1) No hospital may assign a direct care registered
17 nurse to a nursing unit or clinical area unless that hospital
18 and the direct care registered nurse determine that the
19 direct care registered nurse has demonstrated and validated
20 current competence in providing care in that area and has
21 also received orientation to that hospital's clinical area
22 sufficient to provide competent, safe, therapeutic and
23 effective care to patients in that area. The policies and
24 procedures of the hospital shall contain the hospital's
25 criteria for making this determination.

26 (2) (i) Direct care registered nurse-to-patient
27 ratios represent the maximum number of patients that
28 shall be assigned to one direct care registered nurse at
29 all times.

30 (ii) For purposes of this paragraph, "assigned"

1 means the direct care registered nurse has responsibility
2 for the provision of care to a particular patient within
3 the direct care registered nurse's validated competency.

4 (3) There shall be no averaging of the number of
5 patients and the total number of direct care registered
6 nurses on the unit during any one shift nor over any period
7 of time.

8 (4) Only direct care registered nurses providing direct
9 patient care shall be included in the ratios. Nurse
10 administrators, nurse supervisors, nurse managers, charge
11 nurses and case managers shall not be included in the
12 calculation of the direct care registered nurse-to-patient
13 ratio. Only direct care registered nurses shall relieve other
14 direct care registered nurses during breaks, meals and other
15 routine, expected absences from the unit.

16 (5) Only direct care registered nurses shall be assigned
17 to intensive care newborn nursery service units, which
18 specifically require one direct care registered nurse to two
19 or fewer infants at all times.

20 (6) In the emergency department, only direct care
21 registered nurses shall be assigned to triage patients, and
22 only direct care registered nurses shall be assigned to
23 critical trauma patients.

24 (b) Unit or patient care areas.--

25 (1) The minimum staffing ratios for general, acute,
26 critical access and specialty hospitals are established in
27 this subsection for direct care registered nurses as follows:

28 (i) The direct care registered nurse-to-patient
29 ratio in an intensive care unit shall be 1:2 or fewer at
30 all times.

1 (ii) The direct care registered nurse-to-patient
2 ratio for a critical care unit shall be 1:2 or fewer at
3 all times.

4 (iii) The direct care registered nurse-to-patient
5 ratio for a neonatal intensive care unit shall be 1:2 or
6 fewer at all times.

7 (iv) The direct care registered nurse-to-patient
8 ratio for a burn unit shall be 1:2 or fewer at all times.

9 (v) The direct care registered nurse-to-patient
10 ratio for a step-down, intermediate care unit shall be
11 1:3 or fewer at all times.

12 (vi) An operating room shall have at least one
13 direct care registered nurse assigned to the duties of
14 the circulating registered nurse and a minimum of one
15 additional person as a scrub assistant for each patient-
16 occupied operating room.

17 (vii) The direct care registered nurse-to-patient
18 ratio in the postanesthesia recovery unit of an
19 anesthesia service shall be 1:2 or fewer at all times,
20 regardless of the type of anesthesia the patient
21 received.

22 (viii) The direct care registered nurse-to-patient
23 ratio for patients receiving conscious sedation shall be
24 1:1 at all times.

25 (ix) (A) The direct care registered nurse-to-
26 patient ratio for an emergency department shall be
27 1:4 or fewer at all times.

28 (B) The direct care registered nurse-to-patient
29 ratio for critical care patients in the emergency
30 department shall be 1:2 or fewer at all times.

1 (C) Only direct care registered nurses shall be
2 assigned to critical trauma patients in the emergency
3 department, and a minimum direct care registered
4 nurse-to-critical trauma patient ratio of 1:1 shall
5 be maintained at all times.

6 (D) In an emergency department, triage, radio or
7 specialty/flight, registered nurses do not count in
8 the calculation of direct care registered nurse-to-
9 patient ratio.

10 ~~(x)~~ (A) The direct care registered nurse-to-
11 patient ratio in the labor and delivery suite of
12 prenatal services shall be 1:1 at all times for
13 active labor patients and patients with medical or
14 obstetrical complications.

15 (B) The direct care registered nurse-to-patient
16 ratio shall be 1:1 at all times for initiating
17 epidural anesthesia and circulation for cesarean
18 delivery.

19 (C) The direct care registered nurse-to-patient
20 ratio for patients in immediate postpartum shall be
21 1:2 or fewer at all times.

22 ~~(x)~~ (A) The direct care registered nurse-to-
23 patient ratio for antepartum patients who are not in
24 active labor shall be 1:3 or fewer at all times.

25 (B) The direct care registered nurse-to-patient
26 ratio for patients in a postpartum area of the
27 prenatal service shall be 1:3 mother-baby couplets or
28 fewer at all times.

29 (C) In the event of cesarean delivery, the total
30 number of mothers plus infants assigned to a single

1 direct care registered nurse shall never exceed four.

2 (D) In the event of multiple births, the total
3 number of mothers plus infants assigned to a single
4 direct care registered nurse shall not exceed six.

5 (E) For postpartum areas in which the direct
6 care registered nurse's assignment consists of
7 mothers only, the direct care registered nurse-to-
8 patient ratio shall be 1:4 or fewer at all times.

9 (F) The direct care registered nurse-to-patient
10 ratio for postpartum women or postsurgical
11 gynecological patients shall be 1:4 or fewer at all
12 times.

13 (G) Well baby nursery direct care registered
14 nurse ratio shall be 1:5 or fewer at all times.

15 (H) The direct care registered nurse-to-patient
16 ratio for unstable newborns and those in the
17 resuscitation period as assessed by the direct care
18 registered nurse shall be 1:1 at all times.

19 (I) The direct care registered nurse-to-patient
20 ratio for recently born infants shall be 1:4 or fewer
21 at all times.

22 (xii) The direct care registered nurse-to-patient
23 ratio for pediatrics shall be 1:3 or fewer at all times.

24 (xiii) The direct care registered nurse-to-patient
25 ratio in telemetry shall be 1:3 or fewer at all times.

26 (xiv) (A) The direct care registered nurse-to-
27 patient ratio in medical/surgical shall be 1:4 or
28 fewer at all times.

29 (B) The direct care registered nurse-to-patient
30 ratios for presurgical and admissions units or

1 ambulatory surgical units shall be 1:4 or fewer at
2 all times.

3 (xv) The direct care registered nurse-to-patient
4 ratio in other specialty units shall be 1:4 or fewer at
5 all times.

6 (xvi) The direct care registered nurse-to-patient
7 ratio in psychiatric units shall be 1:4 or fewer at all
8 times.

9 (xvii) The direct care registered nurse-to-patient
10 ratio in a rehabilitation unit or a skilled nursing
11 facility shall be 1:5 or fewer at all times.

12 (c) Additional conditions.--

13 (1) Identifying a unit or clinical patient care area by
14 a name or term other than those defined in section 833-A does
15 not affect the requirement to staff at the direct care
16 registered nurse-to-patient ratios identified for the level
17 of intensity or type of care described in section 833-A and
18 this section.

19 (2) (i) Patients shall only be cared for on units or
20 clinical patient care areas where the level of intensity,
21 type of care and direct care registered nurse-to-patients
22 ratios meet the individual requirements and needs of each
23 patient.

24 (ii) The use of patient acuity-adjustable units or
25 clinical patient care areas is prohibited.

26 (3) Video cameras or monitors or any form of electronic
27 visualization of a patient shall not be deemed a substitute
28 for the direct observation required for patient assessment by
29 the direct care registered nurse and for patient protection
30 required by an attendant or sitter.

1 Section 841-A. Hospital unit staffing plans.

2 (a) Acuity-based patient classification system.--

3 (1) In addition to the direct care registered nurse
4 ratio requirements of subsection (b), a hospital shall assign
5 additional nursing staff, such as licensed practical nurses
6 and certified nursing assistants, through the implementation
7 of a valid acuity-based patient classification system for
8 determining nursing care needs of individual patients that
9 reflects the assessment made by the assigned direct care
10 registered nurse of patient nursing care requirements and
11 provides for shift-by-shift staffing based on those
12 requirements.

13 (2) The ratios specified in subsection (b) shall
14 constitute the minimum number of registered nurses who shall
15 be assigned to direct patient care. Additional registered
16 nursing staff in excess of the prescribed ratios shall be
17 assigned to direct patient care in accordance with the
18 hospital's implementation of a valid system for determining
19 nursing care requirements.

20 (3) Based on the direct care registered nurse assessment
21 as reflected in the implementation of a valid system and
22 independent direct care registered nurse determination of
23 patient care needs, additional licensed and nonlicensed staff
24 shall be assigned.

25 (b) Development of written staffing plan.--

26 (1) A written staffing plan shall be developed by the
27 chief nursing officer or a designee, based on individual
28 patient care needs determined by the system. The staffing
29 plan shall be developed and implemented for each patient care
30 unit and shall specify individual patient care requirements

1 and the staffing levels for direct care registered nurses and
2 other licensed and unlicensed personnel.

3 (2) In no case shall the staffing level for direct care
4 registered nurses on any shifts fall below the requirements
5 of this subsection.

6 (3) The plan shall include the following:

7 (i) Staffing requirements as determined by the
8 system for each unit, documented and posted on the unit
9 for public view on a day-to-day, shift-by-shift basis.

10 (ii) The actual staff and staff mix provided,
11 documented and posted on the unit for public view on a
12 day-to-day, shift-by-shift basis.

13 (iii) The variance between required and actual
14 staffing patterns, documented and posted on the unit for
15 public view on a day-to-day, shift-by-shift basis.

16 (c) Recordkeeping.--In addition to the documentation
17 required in subsection (b), the hospital shall keep a record of
18 the actual direct care registered nurse, licensed practical
19 nurse and certified nursing assistant assignments to individual
20 patients by licensure category, documented on a day-to-day,
21 shift-by-shift basis. The hospital shall retain:

22 (1) The staffing plan required in subsection (b) for a
23 period of two years.

24 (2) The record of the actual direct care registered
25 nurse, licensed practical nurse and certified nursing
26 assistant assignments by licensure and nonlicensure category.

27 (d) Review committee to conduct annual review of system.--
28 The reliability of the system for validating staffing
29 requirements shall be reviewed at least annually by a committee
30 to determine whether the system accurately measures individual

1 patient care needs and completely predicts direct care
2 registered nurse, licensed practical nurse and certified nursing
3 assistant staffing requirements based exclusively on individual
4 patient needs.

5 (e) Review committee membership.--

6 (1) At least half of the members of the review committee
7 shall be unit-specific, competent direct care registered
8 nurses who provide direct patient care.

9 (2) The members of the committee shall be appointed by
10 the chief nurse officer, except where direct care registered
11 nurses are represented for collective bargaining purposes,
12 all direct care registered nurses on the committee shall be
13 appointed by the authorized collective bargaining agent.

14 (3) In case of a dispute, the direct care registered
15 nurse assessment shall prevail.

16 (f) Time period for adjustments.--If the review committee
17 determines that adjustments are necessary in order to assure
18 accuracy in measuring patient care needs, the adjustments shall
19 be implemented within 30 days of that determination.

20 (g) Process for staff input.--A hospital shall develop and
21 document a process by which all interested staff may provide
22 input about the system's required revisions and the overall
23 staffing plan.

24 (h) Limitation on administrator of nursing services.--The
25 administrator of nursing services may not be designated to serve
26 as a charge nurse or to have direct patient care responsibility.

27 (i) Minimum requirement for each shift.--Each patient care
28 unit shall have at least one direct care registered nurse
29 assigned, present and responsible for the patient care in the
30 unit on each shift.

1 (j) Temporary nursing agencies.--

2 (1) Nursing personnel from temporary nursing agencies
3 may not be responsible for patient care on any clinical unit
4 without having demonstrated and validated clinical competency
5 on the assigned unit.

6 (2) A hospital that utilizes temporary nursing agencies
7 shall have and adhere to a written procedure to orient and
8 evaluate personnel from these sources. In order to ensure
9 clinical competence of temporary agency personnel, the
10 procedures shall require that personnel from temporary
11 nursing agencies be evaluated as often, or more often, than
12 staff employed directly by the hospital.

13 (k) Planning for routine fluctuations.--

14 (1) A hospital shall plan for routine fluctuations, such
15 as admissions, discharges and transfers in patient census.

16 (2) If a health care emergency causes a change in the
17 number of patients on a unit, the hospital shall demonstrate
18 that immediate and diligent efforts were made to maintain
19 required staffing levels.

20 (3) For purposes of this subsection, a "health care"
21 emergency is defined as an emergency declared by the Federal
22 Government or the head of a State, local, county or municipal
23 government.

24 Section 842-A. Minimum requirements for hospital systems.

25 (a) General rule.--A hospital shall:

26 (1) Adopt an acuity-based patient classification system,
27 including a written nursing care staffing plan for each
28 patient care unit.

29 (2) Implement, evaluate and modify the plan as necessary
30 and appropriate under the provisions of this section.

1 (3) Provide direct care nurse staffing based on
2 individual patient need determined in accordance with the
3 requirements of this section.

4 (4) Use the system to determine additional direct care
5 registered nursing staffing above the minimum staffing ratios
6 required by subsection (b) and any staffing by licensed
7 practical nurses or unlicensed nursing personnel.

8 (b) Required elements.--The system used by a hospital for
9 determining patient nursing care needs shall include, but not be
10 limited to, the following elements:

11 (1) A method to predict nursing care requirements of
12 individual patient assessments and as determined by direct
13 care registered nurse assessments of individual patients.

14 (2) A method that provides for sufficient direct care
15 registered nursing staffing to ensure that all of the
16 elements in this subsection are performed in the planning and
17 delivery of care for each patient: assessment, nursing
18 diagnosis, planning and intervention.

19 (3) An established method by which the amount of nursing
20 care needed for each category of patient is validated.

21 (4) A method for validation of the reliability of the
22 system.

23 (c) Transparency of system.--

24 (1) A system shall be fully transparent in all respects,
25 including:

26 (i) Disclosure of detailed documentation of the
27 methodology used by the system to predict nursing
28 staffing.

29 (ii) Identification of each factor, assumption and
30 value used in applying the methodology.

1 (iii) An explanation of the scientific and empirical
2 basis for each such assumption and value and
3 certification by a knowledgeable and authorized
4 representative of the hospital that the aforementioned
5 disclosures regarding methods used for testing and
6 validating the accuracy and reliability of the system are
7 true and complete.

8 (2) A hospital shall include in the documentation
9 required by this section an evaluation and a report on at
10 least an annual basis, which evaluation and report shall be
11 conducted and prepared by a committee consisting exclusively
12 of direct care registered nurses who have provided direct
13 patient care in the units covered by the system. Where direct
14 care registered nurses are represented for collective
15 bargaining purposes, all direct care registered nurses on the
16 committee shall be appointed by the authorized collective
17 bargaining agent.

18 (d) Submission to Department of Health.--

19 (1) The documentation required by this section shall be
20 submitted in its entirety to the Department of Health as a
21 mandatory condition of hospital licensure, with a
22 certification by the chief nurse officer for the hospital
23 that it completely and accurately reflects implementation of
24 a valid system used to determine nursing service staffing by
25 the hospital for every shift on every clinical unit in which
26 patients reside and receive care.

27 (2) The certification shall be executed by the chief
28 nurse officer under penalty of perjury and shall contain an
29 express acknowledgment that any false statement in the
30 certification shall constitute fraud and be subject to

1 criminal and civil prosecution and penalties under the
2 antifraud provisions applicable to false claims for
3 government funds or benefits.

4 (3) The documentation shall be available for public
5 inspection in its entirety in accordance with procedures
6 established by appropriate administrative regulation
7 consistent with the purposes of this chapter.

8 Section 843-A. Prohibited activities.

9 The following activities are prohibited:

10 (1) A hospital shall not directly assign any unlicensed
11 personnel to perform registered nurse functions in lieu of
12 care delivered by a licensed registered nurse and shall not
13 assign unlicensed personnel to perform registered nurse
14 functions under the clinical supervision of a direct care
15 registered nurse.

16 (2) Unlicensed personnel may not perform tasks that
17 require the clinical assessment, judgment and skill of a
18 licensed registered nurse, including, without limitation:

19 (i) Nursing activities that require nursing
20 assessment and judgment during implementation.

21 (ii) Physical, psychological and social assessments
22 that require nursing judgment, intervention, referral or
23 follow-up.

24 (iii) Formulation of a plan of nursing care and
25 evaluation of the patient's response to the care
26 provided.

27 (iv) Administration of medication, venipuncture or
28 intravenous therapy, parenteral or tube feedings,
29 invasive procedures, including inserting nasogastric
30 tubes, inserting catheters or tracheal suctioning.

1 (v) Educating patients and their families concerning
2 the patient's health care problems, including
3 postdischarge care.

4 (c) Mandatory overtime.--A hospital shall not impose
5 mandatory overtime requirements to meet the staffing ratios
6 imposed in section 840-A.

7 Section 844-A. Fines and civil penalties.

8 The following fines and penalties shall apply to violations
9 of this chapter:

10 (1) A hospital found to have violated or aided and
11 abetted section 841-A, 842-A or 843-A shall be subject, in
12 addition to any other penalties that may be prescribed by
13 law, to a civil penalty of not more than \$25,000 for each
14 violation and an additional \$10,000 per nursing unit shift
15 until the violation is corrected.

16 (2) A hospital employer found to have violated or
17 interfered with any of the rights or protections provided and
18 guaranteed under sections 836-A, 837-A, 838-A, 839-A and
19 840-A shall be subject to a civil penalty of not more than
20 \$25,000 for each such violation or occurrence of prohibited
21 conduct.

22 (3) Any hospital management, nursing service or medical
23 personnel found to have violated or interfered with any of
24 the rights or protections provided and guaranteed under
25 sections 836-A, 837-A, 838-A, 839-A and 840-A shall be
26 subject to a civil penalty of not more than \$20,000 for each
27 such violation or occurrence of prohibited conduct.

28 Section 845-A. Private right of action.

29 (a) General rule.--A health care facility that violates the
30 rights of an employee specified in sections 835-A, 836-A, 837-A,

1 838-A and 839-A may be held liable to the employee in an action
2 brought in a court of competent jurisdiction for such legal or
3 equitable relief as may be appropriate to effectuate the
4 purposes of this chapter, including, but not limited to,
5 reinstatement, promotion, lost wages and benefits and
6 compensatory and consequential damages resulting from the
7 violations together with an equal amount in liquidated damages.
8 The court in the action shall, in addition to any judgment
9 awarded to the plaintiffs, award reasonable attorney fees and
10 costs of action to be paid by the defendants. The employee's
11 right to institute a privation action is not limited by any
12 other rights granted under this chapter.

13 (b) Relief for nurses.--In addition to the amount recovered
14 under subsection (d), a nurse whose employment is suspended or
15 terminated in violation of this section is entitled to:

16 (1) Reinstatement in the nurse's former position or
17 severance pay in an amount equal to three months of the
18 nurse's most recent salary.

19 (2) Compensation for wages lost during the period of
20 suspension or termination.

21 (3) An award of reasonable attorney fees and costs as
22 the prevailing party.

23 Section 846-A. Enforcement procedure.

24 (a) Period of limitations.--

25 (1) Except as otherwise provided in paragraph (2), in
26 the case of any action brought for a willful violation of the
27 applicable provisions of this chapter, the action must be
28 brought within three years of the date of the last event
29 constituting the alleged violation for which such action is
30 brought.

1 (2) An action must be brought under section 845-A no
2 later than two years after the date of the last event
3 constituting the alleged violation for which the action is
4 brought.

5 (b) Posting requirements.--A hospital and other medical
6 facility shall post the following provisions of this chapter in
7 a prominent place for review by the public and the employees.
8 The posting shall have a title across the top in no less than 35
9 point, bold typeface stating the following: "RIGHTS OF
10 REGISTERED NURSES AS PATIENT ADVOCATES, EMPLOYEES AND PATIENTS."

11 Section 2. This act shall take effect in 60 days.