

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 867 Session of 2019

INTRODUCED BY DiGIROLAMO, A. DAVIS, SNYDER, T. DAVIS, KINSEY, YOUNGBLOOD, MULLINS, READSHAW, MILLARD, BOBACK, MURT, BARRAR, HARKINS, MULLERY, OTTEN, FREEMAN, KORTZ, DEASY, HILL-EVANS, GOODMAN, McCLINTON, DeLUCA, CIRESI, NEILSON, SIMS, DONATUCCI, BULLOCK, GALLOWAY, MEHAFFIE, M. K. KELLER, CARROLL, BOYLE, WEBSTER, ROEBUCK, INNAMORATO, FARRY, McCARTER AND FRANKEL, MARCH 18, 2019

REFERRED TO COMMITTEE ON HEALTH, MARCH 18, 2019

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.

1 Section 832-A. Purpose.

2 The General Assembly finds that:

3 (1) Health care services are becoming more complex, and  
4 it is increasingly difficult for patients to access  
5 integrated services.

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

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

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

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

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

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

28 (8) Mandating adoption of uniform, minimum, numerical  
29 and specific registered nurse-to-patient staffing ratios by  
30 licensed hospital facilities is necessary for competent,

1 safe, therapeutic and effective professional nursing care and  
2 for retention and recruitment of qualified direct care  
3 registered nurses.

4 (9) Direct care registered nurses must be able to  
5 advocate for their patients without fear of retaliation from  
6 their employer.

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

14 Section 833-A. Definitions.

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

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

22 (1) The severity of patient illness.

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

24 (3) The intensity of required nursing interventions.

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

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

30 (6) The need for advocacy intervention.

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

2           (8) The patient care delivery system.

3           (9) The unit's geographic layout.

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

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

12       "Ancillary staff." Personnel employed by or contracted to  
13 work at a facility that have an effect on the delivery of  
14 quality care to patients, including, but not limited to,  
15 licensed practical nurses, unlicensed assistive personnel,  
16 service, maintenance, clerical, professional and technical  
17 workers and all other health care workers.

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

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

24       "Clinical supervision." The assignment and direction of  
25 patient care tasks required in the implementation of nursing  
26 care for a patient to other licensed nursing staff or to  
27 unlicensed staff by a direct care registered nurse in the  
28 exclusive interests of the patient.

29       "Competence." The current documented, demonstrated and  
30 validated ability of a direct care registered nurse to act and

1 integrate the knowledge, skills, abilities and independent  
2 professional judgment that underpin safe, therapeutic and  
3 effective patient care and which ability is based on the  
4 satisfactory performance of:

5 (1) The statutorily recognized duties and  
6 responsibilities of the registered nurses as provided under  
7 the laws of this Commonwealth.

8 (2) The standards required under this chapter that are  
9 specific to each hospital unit.

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

14 "Critical care unit" or "intensive care unit." A nursing  
15 unit of an acute care hospital that is established to safeguard  
16 and protect patients whose severity of medical conditions  
17 require continuous monitoring and complex interventions by  
18 direct care registered nurses and whose restorative measures  
19 require complex monitoring, intensive intricate assessment,  
20 evaluation, specialized rapid intervention and the education and  
21 teaching of the patient, the patient's family or other  
22 representatives by a competent and experienced direct care  
23 registered nurse. The term includes an intensive care unit, a  
24 burn center, a coronary care unit or an acute respiratory unit.

25 "Direct care registered nurse" or "direct care professional  
26 nurse." A registered nurse who:

27 (1) Is currently licensed by the State Board of Nursing  
28 to engage in professional nursing with documented clinical  
29 competence as defined in the act of May 22, 1951 (P.L.317,  
30 No.69), known as The Professional Nursing Law.

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

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

9           "Hospital unit" or "clinical patient care area." An  
10          intensive care or critical care unit, a burn unit, a labor and  
11          delivery room, antepartum and postpartum, a newborn nursery, a  
12          postanesthesia service area, an emergency department, an  
13          operating room, a pediatric unit, a step-down or intermediate  
14          care unit, a specialty care unit, a telemetry unit, a general  
15          medical/surgical care unit, a psychiatric unit, a rehabilitation  
16          unit or a skilled nursing facility unit.

17          "Long-term acute care hospital." A hospital or health care  
18          facility that specializes in providing acute care to medically  
19          complex patients with an anticipated length of stay of more than  
20          25 days. The term includes a free-standing and a hospital-  
21          within-hospital model of a long-term acute care facility.

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

23                 (1) Is established to safeguard and protect patients  
24                 whose severity of illness, including all comorbidities,  
25                 restorative measures and level of nursing intensity requires  
26                 continuous care through direct observation by a direct care  
27                 registered nurse, monitoring, multiple assessments,  
28                 specialized interventions, evaluations and the education or  
29                 teaching of a patient's family or other representatives by a  
30                 competent and experienced direct care registered nurse.

1           (2) May include patients requiring less than intensive  
2           care or step-down care and patients receiving 24-hour  
3           inpatient general medical care, postsurgical care or both.

4           (3) May include mixed patient populations of diverse  
5           diagnoses and diverse age groups, excluding pediatric  
6           patients.

7           "Patient assessment." The direct care utilization by a  
8           registered nurse of critical thinking, which is the  
9           intellectually disciplined process of actively and skillfully  
10           interpreting, applying, analyzing, synthesizing and evaluating  
11           data obtained through the registered nurse's direct care, direct  
12           observation and communication with others.

13           "Professional judgment." The educated, informed and  
14           experienced process that a direct care registered nurse  
15           exercises in forming an opinion and reaching a clinical  
16           decision, in a patient's best interest, based upon analysis of  
17           data, information and scientific evidence.

18           "Rehabilitation unit." A functional clinical unit for the  
19           provision of those rehabilitation services that restore an ill  
20           or injured patient to the highest level of self-sufficiency or  
21           gainful employment of which the patient is capable in the  
22           shortest possible time, compatible with the patient's physical,  
23           intellectual and emotional or psychological capabilities and in  
24           accordance with planned goals and objectives.

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

26           (1) Provides skilled nursing care and supportive care to  
27           patients whose primary need is for the availability of  
28           skilled nursing care on a long-term basis and who are  
29           admitted after at least a 48-hour period of continuous  
30           inpatient care.

1           (2) Provides at least the following:

2           (i) Medical.

3           (ii) Nursing.

4           (iii) Dietary.

5           (iv) Pharmaceutical services.

6           (v) An activity program.

7   "Specialty care unit." A unit that:

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

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

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

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

23           (1) To safeguard and protect patients whose severity of  
24           illness, including all comorbidities, restorative measures  
25           and level of nursing intensity requires intermediate  
26           intensive care through direct observation by the direct care  
27           registered nurse, monitoring, multiple assessments,  
28           specialized interventions, evaluations and the education and  
29           teaching of the patient's family or other representatives by  
30           a competent and experienced direct care registered nurse.

1           (2) To provide care to patients with moderate or  
2           potentially severe physiologic instability requiring  
3           technical support but not necessarily artificial life  
4           support.

5           "Technical support." Specialized equipment and direct care  
6           registered nurses providing for invasive monitoring, telemetry  
7           and mechanical ventilation for the immediate amelioration or  
8           remediation of severe pathology for those patients requiring  
9           less care than intensive care, but more care than that which is  
10          required from medical/surgical care.

11          "Telemetry unit." A unit that:

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

21           (2) Is designated for the electronic monitoring,  
22           recording, retrieval and display of cardiac electrical  
23           signals.

24          Section 834-A. Hospital nursing practice standard.

25           (a) Professional obligation and right.--By virtue of their  
26           professional license and ethical obligations, all registered  
27           nurses have a duty and right to act and provide care in the  
28           exclusive interests of a patient and to act as the patient's  
29           advocate, as circumstances require, in accordance with the  
30           provisions described in section 836-A.

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

2 (1) A direct care registered nurse shall provide  
3 competent, safe, therapeutic and effective nursing care to  
4 assigned patients.

5 (2) As a condition of licensure, a hospital or other  
6 health care facility shall adopt, disseminate to direct care  
7 registered nurses and comply with a written policy that  
8 details the circumstances under which a direct care  
9 registered nurse may refuse a work assignment.

10 (3) A work assignment policy shall permit a direct care  
11 registered nurse to refuse a patient assignment for which:

12 (i) The nurse does not have the necessary knowledge,  
13 judgment, skills and ability to provide the required care  
14 without compromising or jeopardizing the patient's  
15 safety, the nurse's ability to meet foreseeable patient  
16 needs or the nurse's license.

17 (ii) The assignment otherwise would violate  
18 requirements under this chapter.

19 (4) A work assignment policy shall permit a direct care  
20 registered nurse to assess an order initiated by a physician  
21 or legally authorized health care professional before  
22 implementation to determine if the order is:

23 (i) In the best interests of the patient.

24 (ii) Initiated by a person legally authorized to  
25 issue the order.

26 (iii) In accordance with applicable law and  
27 regulation governing nursing care.

28 (5) A work assignment policy shall contain procedures  
29 for the following:

30 (i) Reasonable requirements for prior notice to the

1 nurse's supervisor regarding the direct care registered  
2 nurse's request and supporting reasons for being relieved  
3 of the assignment, continued duty or implementation of an  
4 order.

5 (ii) Where feasible, an opportunity for the  
6 supervisor to review the specific conditions supporting  
7 the direct care registered nurse's request and to decide  
8 whether to:

9 (A) remedy the conditions;

10 (B) to relieve the direct care registered nurse  
11 of the assignment or order; or

12 (C) deny the direct care registered nurse's  
13 request to be relieved of the assignment, continued  
14 duty or implementation of an order.

15 (iii) A process that permits the nurse to exercise  
16 the right to refuse the assignment, continued on-duty  
17 status or implementation of an order when the supervisor  
18 denies the request to be relieved if:

19 (A) The supervisor rejects the request without  
20 proposing a remedy or the proposed remedy would be  
21 inadequate or untimely.

22 (B) The complaint and investigation process with  
23 a regulatory agency would be untimely to address  
24 concern.

25 (C) The employee, in good faith, believes that  
26 the assignment or implementation of an order meets  
27 conditions justifying refusal.

28 (iv) A direct care registered nurse who refuses an  
29 assignment or implementation of an order under a work  
30 assignment policy established under this section shall

1 not be deemed, by reason thereof, to have engaged in  
2 negligent or incompetent action, patient abandonment or  
3 otherwise to have violated applicable nursing law.

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

5 A registered nurse has the professional obligation, and  
6 therefore the right, to act as a patient's advocate as  
7 circumstances require by:

8 (1) initiating action to improve health care or to  
9 change decisions or activities which in the professional  
10 judgment of the direct care registered nurse are against the  
11 interests or wishes of the patient; or

12 (2) giving the patient the opportunity to make informed  
13 decisions about health care before health care is provided.

14 Section 836-A. Free speech.

15 (a) Prohibition against discharge or retaliation for  
16 whistleblowing.--A hospital or other health care facility may  
17 not discharge from duty or otherwise retaliate against a direct  
18 care registered nurse or other health care professional  
19 responsible for patient care who reports unsafe practices or  
20 violations of policy, regulation, rule or law.

21 (b) Rights guaranteed as essential to effective patient  
22 advocacy.--

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

28 (2) The right of free speech protected by this section  
29 is a necessary incident of the professional nurse duty of  
30 patient advocacy and is essential to protecting the health

1 and safety of hospital patients and of the people of this  
2 Commonwealth.

3 (c) Protected speech.--

4 (1) The free speech protected by this section includes,  
5 without limitation, any type of spoken, gestured, written,  
6 printed or electronically communicated expression concerning  
7 any matter related to or affecting competent, safe,  
8 therapeutic and effective nursing care by direct care  
9 registered nurses or other health care professionals and  
10 workers at the hospital facility, at facilities within large  
11 health delivery systems or corporate chains that include the  
12 hospital, or more generally within the health care industry.

13 (2) The content of speech protected by this section  
14 includes, without limitation, the facts and circumstances of  
15 particular events, patient care practices, institutional  
16 actions, policies or conditions that may facilitate or impede  
17 competent, safe, therapeutic and effective nursing practice  
18 and patient care, adverse patient outcomes or incidents,  
19 sentinel and reportable events and arguments in support of or  
20 against hospital policies or practices relating to the  
21 delivery of nursing care.

22 (3) Protected speech under this section includes the  
23 reporting, internally, externally or publicly, of actions,  
24 conduct, events, practices or other matters that are believed  
25 to constitute:

26 (i) a violation of Federal, State or local laws or  
27 regulations;

28 (ii) a breach of applicable codes of professional  
29 ethics, including the professional and ethical  
30 obligations of direct care registered nurses;

1           (iii) matters which, in the independent judgment of  
2           the reporting direct care registered nurse, are  
3           appropriate or required for disclosure in furtherance and  
4           support of the nurse's exercise of patient advocacy  
5           duties to improve health care or change decisions or  
6           activities which, in the professional judgment of the  
7           direct care registered nurse, are against the interests  
8           or wishes of the patient or to ensure that the patient is  
9           afforded a meaningful opportunity to make informed  
10           decisions about health care before it is provided; or

11           (iv) matters as described in subparagraph (iii) made  
12           in aid and support of the exercise of patient advocacy  
13           duties of direct care registered nurse colleagues.

14       (d) Nondisclosure of confidential information.--Nothing in  
15       this section shall be construed to authorize disclosure of  
16       private and confidential patient information except where the  
17       disclosure is:

18           (1) required by law;

19           (2) compelled by proper legal process;

20           (3) consented to by the patient; or

21           (4) provided in confidence to regulatory or  
22       accreditation agencies or other government entities for  
23       investigatory purposes or under formal or informal complaints  
24       of unlawful or improper practices for purposes of achieving  
25       corrective and remedial action.

26       (e) Duty of patient advocacy.--Engaging in free speech  
27       activity as described under this section constitutes an exercise  
28       of the direct care registered nurse's duty and right of patient  
29       advocacy. The subject matter of free speech activity as  
30       described in this section is presumed to be a matter of public

1 concern, and the disclosures protected under this section are  
2 presumed to be in the public interest.

3 Section 837-A. Protected rights.

4 (a) General rule.--A person shall have the right to:

5 (1) Oppose policies, practices or actions of a hospital  
6 or other medical facility that are alleged to violate, breach  
7 or fail to comply with any provision of this chapter.

8 (2) Cooperate, provide evidence, testify or otherwise  
9 support or participate in any investigation or complaint  
10 proceeding under sections 845-A and 846-A.

11 (b) Right to file complaint.--

12 (1) A patient of a hospital or other medical facility  
13 aggrieved by the hospital's or facility's interference with  
14 the full and free exercise of patient advocacy duties by a  
15 direct care registered nurse shall have the right to make or  
16 file a complaint, cooperate, provide evidence, testify or  
17 otherwise support or participate in any investigation or  
18 complaint proceeding under sections 845-A and 846-A.

19 (2) A direct care registered nurse of a hospital or  
20 other medical facility aggrieved by the hospital's or  
21 facility's interference with the full and free exercise of  
22 patient advocacy duties shall have the right to make or file  
23 a complaint, cooperate, provide evidence, testify or  
24 otherwise support or participate in any investigation or  
25 complaint proceeding under sections 845-A and 846-A.

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

28 No hospital or other medical facility or its agents may:

29 (1) interfere with, restrain, coerce, intimidate or deny  
30 the exercise of or the attempt to exercise, by a person of a

1 right provided or protected under this chapter; or

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

6 Section 839-A. No retaliation or discrimination for protected  
7 actions.

8 No hospital or other medical facility may discriminate or  
9 retaliate in any manner against a patient, employee or contract  
10 employee of the hospital or other medical facility or any other  
11 person because that person has:

12 (1) presented a grievance or complaint or has initiated  
13 or cooperated in an investigation or proceeding of a  
14 governmental entity, regulatory agency or private  
15 accreditation body; or

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

19 Section 840-A. Direct care registered nurse-to-patient staffing  
20 ratios.

21 (a) General requirements.--A hospital shall provide minimum  
22 staffing by direct care registered nurses in accordance with the  
23 general requirements of this subsection and the clinical unit or  
24 clinical patient care area direct care registered nurse-to-  
25 patient ratios specified in subsection (b). Staffing for patient  
26 care tasks not requiring a direct care registered nurse is not  
27 included within these ratios and shall be determined under an  
28 acuity-based patient classification system, this section and  
29 section 841-A. The requirements are as follows:

30 (1) No hospital may assign a direct care registered

1 nurse to a nursing unit or clinical area unless that hospital  
2 and the direct care registered nurse determine that the  
3 direct care registered nurse has demonstrated and validated  
4 current competence in providing care in that area and has  
5 also received orientation to that hospital's clinical area  
6 sufficient to provide competent, safe, therapeutic and  
7 effective care to patients in that area. The policies and  
8 procedures of the hospital shall contain the hospital's  
9 criteria for making this determination.

10 (2) (i) Direct care registered nurse-to-patient ratios  
11 represent the maximum number of patients that shall be  
12 assigned to one direct care registered nurse at all  
13 times.

14 (ii) For purposes of this paragraph, "assigned"  
15 means the direct care registered nurse has responsibility  
16 for the provision of care to a particular patient within  
17 the direct care registered nurse's validated competency.

18 (3) There shall be no averaging of the number of  
19 patients and the total number of direct care registered  
20 nurses on the unit during any one shift nor over any period  
21 of time.

22 (4) Only direct care registered nurses providing direct  
23 patient care shall be included in the ratios. Nurse  
24 administrators, nurse supervisors, nurse managers, charge  
25 nurses and case managers may not be included in the  
26 calculation of the direct care registered nurse-to-patient  
27 ratio. Only direct care registered nurses shall relieve other  
28 direct care registered nurses during breaks, meals and other  
29 routine, expected absences from the unit.

30 (5) Only direct care registered nurses shall be assigned

1 to intensive care newborn nursery service units, which  
2 specifically require one direct care registered nurse to two  
3 or fewer infants at all times.

4 (6) In the emergency department, only direct care  
5 registered nurses shall be assigned to triage patients, and  
6 only direct care registered nurses shall be assigned to  
7 critical trauma patients.

8 (b) Unit or patient care areas.--The minimum staffing ratios  
9 for general, acute, critical access and specialty hospitals are  
10 established in this subsection for direct care registered nurses  
11 as follows:

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

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

16 (3) The direct care registered nurse-to-patient ratio  
17 for a neonatal intensive care unit shall be 1:2 or fewer at  
18 all times.

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

21 (5) The direct care registered nurse-to-patient ratio  
22 for a step-down, intermediate care unit shall be 1:3 or fewer  
23 at all times.

24 (6) An operating room shall have at least one direct  
25 care registered nurse assigned to the duties of the  
26 circulating registered nurse and a minimum of one additional  
27 person as a scrub assistant for each patient-occupied  
28 operating room.

29 (7) The direct care registered nurse-to-patient ratio in  
30 the postanesthesia recovery unit of an anesthesia service

1 shall be 1:2 or fewer at all times, regardless of the type of  
2 anesthesia the patient received.

3 (8) The direct care registered nurse-to-patient ratio  
4 for patients receiving conscious sedation shall be 1:1 at all  
5 times.

6 (9) (i) The direct care registered nurse-to-patient  
7 ratio for an emergency department shall be 1:4 or fewer  
8 at all times.

9 (ii) The direct care registered nurse-to-patient  
10 ratio for critical care patients in the emergency  
11 department shall be 1:2 or fewer at all times.

12 (iii) Only direct care registered nurses shall be  
13 assigned to critical trauma patients in the emergency  
14 department, and a minimum direct care registered nurse-  
15 to-critical trauma patient ratio of 1:1 shall be  
16 maintained at all times.

17 (iv) In an emergency department, triage, radio or  
18 specialty/flight, registered nurses do not count in the  
19 calculation of direct care registered nurse-to-patient  
20 ratio.

21 (10) (i) The direct care registered nurse-to-patient  
22 ratio in the labor and delivery suite of prenatal  
23 services shall be 1:1 at all times for active labor  
24 patients and patients with medical or obstetrical  
25 complications.

26 (ii) The direct care registered nurse-to-patient  
27 ratio shall be 1:1 at all times for initiating epidural  
28 anesthesia and circulation for cesarean delivery.

29 (iii) The direct care registered nurse-to-patient  
30 ratio for patients in immediate postpartum shall be 1:2

1 or fewer at all times.

2 (11) (i) The direct care registered nurse-to-patient  
3 ratio for antepartum patients who are not in active labor  
4 shall be 1:3 or fewer at all times.

5 (ii) The direct care registered nurse-to-patient  
6 ratio for patients in a postpartum area of the prenatal  
7 service shall be 1:3 mother-baby couplets or fewer at all  
8 times.

9 (iii) In the event of cesarean delivery, the total  
10 number of mothers plus infants assigned to a single  
11 direct care registered nurse shall never exceed four.

12 (iv) In the event of multiple births, the total  
13 number of mothers plus infants assigned to a single  
14 direct care registered nurse shall not exceed six.

15 (v) For postpartum areas in which the direct care  
16 registered nurse's assignment consists of mothers only,  
17 the direct care registered nurse-to-patient ratio shall  
18 be 1:4 or fewer at all times.

19 (vi) The direct care registered nurse-to-patient  
20 ratio for postpartum women or postsurgical gynecological  
21 patients shall be 1:4 or fewer at all times.

22 (vii) Well baby nursery direct care registered  
23 nurse-to-patient ratio shall be 1:5 or fewer at all  
24 times.

25 (viii) The direct care registered nurse-to-patient  
26 ratio for unstable newborns and those in the  
27 resuscitation period as assessed by the direct care  
28 registered nurse shall be 1:1 at all times.

29 (ix) The direct care registered nurse-to-patient  
30 ratio for recently born infants shall be 1:4 or fewer at

1           all times.

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

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

6           (14) (i) The direct care registered nurse-to-patient  
7 ratio in medical/surgical shall be 1:4 or fewer at all  
8 times.

9                   (ii) The direct care registered nurse-to-patient  
10 ratios for presurgical and admissions units or ambulatory  
11 surgical units shall be 1:4 or fewer at all times.

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

14           (16) The direct care registered nurse-to-patient ratio  
15 in psychiatric units shall be 1:4 or fewer at all times.

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

19 (c) Additional conditions.--

20           (1) Identifying a unit or clinical patient care area by  
21 a name or term other than those defined in section 833-A does  
22 not affect the requirement to staff at the direct care  
23 registered nurse-to-patient ratios identified for the level  
24 of intensity or type of care described in section 833-A and  
25 this section.

26           (2) (i) Patients shall only be cared for on units or  
27 clinical patient care areas where the level of intensity,  
28 type of care and direct care registered nurse-to-patients  
29 ratios meet the individual requirements and needs of each  
30 patient.

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

3           (3) Video cameras, monitors or any form of electronic  
4           visualization of a patient shall not be deemed a substitute  
5           for the direct observation required for patient assessment by  
6           the direct care registered nurse and for patient protection  
7           required by an attendant or sitter.

8 Section 841-A. Hospital unit staffing plans.

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

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

20           (2) The ratios specified in subsection (b) shall  
21           constitute the minimum number of registered nurses who shall  
22           be assigned to direct patient care. Additional registered  
23           nursing staff in excess of the prescribed ratios shall be  
24           assigned to direct patient care in accordance with the  
25           hospital's implementation of a valid system for determining  
26           nursing care requirements.

27           (3) Based on the direct care registered nurse assessment  
28           as reflected in the implementation of a valid system and  
29           independent direct care registered nurse determination of  
30           patient care needs, additional licensed and nonlicensed staff

1 shall be assigned.

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

3 (1) A written staffing plan shall be developed by the  
4 chief nursing officer or a designee, based on individual  
5 patient care needs determined by the system. The staffing  
6 plan shall be developed and implemented for each patient care  
7 unit and shall specify individual patient care requirements  
8 and the staffing levels for direct care registered nurses and  
9 other licensed and unlicensed personnel. The staffing plan  
10 shall ensure that the facility implements the requirements  
11 without diminishing the staffing levels of its ancillary  
12 staff.

13 (2) In no case may the staffing level for direct care  
14 registered nurses on any shifts fall below the requirements  
15 of this subsection.

16 (3) The plan shall include the following:

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

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

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

26 (c) Recordkeeping.--In addition to the documentation  
27 required in subsection (b), the hospital shall keep a record of  
28 the actual direct care registered nurse, licensed practical  
29 nurse and certified nursing assistant assignments to individual  
30 patients by licensure category, documented on a day-to-day,

1 shift-by-shift basis. The hospital shall retain:

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

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

7 (d) Review committee to conduct annual review of system.--

8 The reliability of the system for validating staffing  
9 requirements shall be reviewed at least annually by a committee  
10 to determine whether the system accurately measures individual  
11 patient care needs and completely predicts direct care  
12 registered nurse, licensed practical nurse and certified nursing  
13 assistant staffing requirements based exclusively on individual  
14 patient needs.

15 (e) Review committee membership.--

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

19 (2) The members of the committee shall be appointed by  
20 the chief nurse officer, except where direct care registered  
21 nurses are represented for collective bargaining purposes,  
22 all direct care registered nurses on the committee shall be  
23 appointed by the authorized collective bargaining agent.

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

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

30 (g) Process for staff input.--A hospital shall develop and

1 document a process by which all interested staff may provide  
2 input about the system's required revisions and the overall  
3 staffing plan.

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

7 (i) Minimum requirement for each shift.--Each patient care  
8 unit shall have at least one direct care registered nurse  
9 assigned, present and responsible for the patient care in the  
10 unit on each shift.

11 (j) Temporary nursing agencies.--

12 (1) Nursing personnel from temporary nursing agencies  
13 may not be responsible for patient care on any clinical unit  
14 without having demonstrated and validated clinical competency  
15 on the assigned unit.

16 (2) A hospital that utilizes temporary nursing agencies  
17 shall have and adhere to a written procedure to orient and  
18 evaluate personnel from these sources. In order to ensure  
19 clinical competence of temporary agency personnel, the  
20 procedures shall require that personnel from temporary  
21 nursing agencies be evaluated as often, or more often, than  
22 staff employed directly by the hospital.

23 (k) Planning for routine fluctuations.--

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

26 (2) If a health care emergency causes a change in the  
27 number of patients on a unit, the hospital shall demonstrate  
28 immediate and diligent efforts were made to maintain required  
29 staffing levels.

30 (3) For purposes of this subsection, "health care

1 emergency" means an emergency declared by the Federal  
2 Government or the head of a State, local, county or municipal  
3 government.

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

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

6 (1) Adopt an acuity-based patient classification system,  
7 including a written nursing care staffing plan for each  
8 patient care unit.

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

11 (3) Provide direct care registered nurse staffing based  
12 on individual patient needs determined in accordance with the  
13 requirements of this section.

14 (4) Use the system to determine additional direct care  
15 registered nurse staffing above the minimum staffing ratios  
16 required by subsection (b) and any staffing by licensed  
17 practical nurses or unlicensed nursing personnel.

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

21 (1) A method to predict nursing care requirements of  
22 individual patient assessments and as determined by direct  
23 care registered nurse assessments of individual patients.

24 (2) A method that provides for sufficient direct care  
25 registered nursing staffing to ensure that all of the  
26 elements in this subsection are performed in the planning and  
27 delivery of care for each patient:

28 (i) Assessment.

29 (ii) Nursing diagnosis.

30 (iii) Planning.

1           (iv) Intervention.

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

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

6 (c) Transparency of system.--

7           (1) A system shall be fully transparent in all respects,  
8 including:

9           (i) Disclosure of detailed documentation of the  
10 methodology used by the system to predict nursing  
11 staffing.

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

14           (iii) An explanation of the scientific and empirical  
15 basis for each assumption and value and certification by  
16 a knowledgeable and authorized representative of the  
17 hospital that the disclosures regarding methods used for  
18 testing and validating the accuracy and reliability of  
19 the system are true and complete.

20           (2) A hospital shall include in the documentation  
21 required by this section an evaluation and a report on at  
22 least an annual basis, which evaluation and report shall be  
23 conducted and prepared by a committee consisting exclusively  
24 of direct care registered nurses who have provided direct  
25 patient care in the units covered by the system. Where direct  
26 care registered nurses are represented for collective  
27 bargaining purposes, all direct care registered nurses on the  
28 committee shall be appointed by the authorized collective  
29 bargaining agent.

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

1           (1) The documentation required by this section shall be  
2 submitted in its entirety to the Department of Health as a  
3 mandatory condition of hospital licensure, with a  
4 certification by the chief nurse officer for the hospital  
5 that the documentation completely and accurately reflects  
6 implementation of a valid system used to determine nursing  
7 service staffing by the hospital for every shift on every  
8 clinical unit in which patients reside and receive care.

9           (2) The certification shall be executed by the chief  
10 nurse officer under penalty of perjury and shall contain an  
11 express acknowledgment that any false statement in the  
12 certification shall constitute fraud and be subject to  
13 criminal and civil prosecution and penalties under the  
14 antifraud provisions applicable to false claims for  
15 government funds or benefits.

16           (3) The documentation shall be available for public  
17 inspection in its entirety in accordance with procedures  
18 established by appropriate administrative regulation  
19 consistent with the purposes of this chapter.

20 Section 843-A. Prohibited activities.

21 (a) General rule.--The following activities are prohibited:

22           (1) A hospital may not directly assign any unlicensed  
23 personnel to perform registered nurse functions in lieu of  
24 care delivered by a licensed registered nurse and may not  
25 assign unlicensed personnel to perform registered nurse  
26 functions under the clinical supervision of a direct care  
27 registered nurse.

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

1           (i) Nursing activities that require nursing  
2 assessment and judgment during implementation.

3           (ii) Physical, psychological and social assessments  
4 that require nursing judgment, intervention, referral or  
5 follow-up.

6           (iii) Formulation of a plan of nursing care and  
7 evaluation of the patient's response to the care  
8 provided.

9           (iv) Administration of medication, venipuncture or  
10 intravenous therapy, parenteral or tube feedings,  
11 invasive procedures, including inserting nasogastric  
12 tubes, inserting catheters or tracheal suctioning.

13           (v) Educating patients and their families concerning  
14 the patient's health care problems, including  
15 postdischarge care.

16       (b) Mandatory overtime.--A hospital may not impose mandatory  
17 overtime requirements to meet the staffing ratios imposed in  
18 section 840-A.

19 Section 844-A. Fines and civil penalties.

20       The following fines and penalties shall apply to violations  
21 of this chapter:

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

28           (2) A hospital employer found to have violated or  
29 interfered with any of the rights or protections provided and  
30 guaranteed under sections 836-A, 837-A, 838-A, 839-A and

1 840-A shall be subject to a civil penalty of not more than  
2 \$25,000 for each violation or occurrence of prohibited  
3 conduct.

4 (3) A hospital management, nursing service or medical  
5 personnel found to have violated or interfered with any of  
6 the rights or protections provided and guaranteed under  
7 sections 836-A, 837-A, 838-A, 839-A and 840-A shall be  
8 subject to a civil penalty of not more than \$20,000 for each  
9 violation or occurrence of prohibited conduct.

10 Section 845-A. Private right of action.

11 (a) General rule.--A hospital or other health care facility  
12 that violates the rights of an employee specified in sections  
13 835-A, 836-A, 837-A, 838-A and 839-A may be held liable to the  
14 employee in an action brought in a court of competent  
15 jurisdiction for such legal or equitable relief as may be  
16 appropriate to effectuate the purposes of this chapter,  
17 including, but not limited to, reinstatement, promotion, lost  
18 wages and benefits and compensatory and consequential damages  
19 resulting from the violations together with an equal amount in  
20 liquidated damages. The court in the action shall, in addition  
21 to any judgment awarded to the plaintiffs, award reasonable  
22 attorney fees and costs of action to be paid by the defendants.  
23 The employee's right to institute a private action is not  
24 limited by any other rights granted under this chapter.

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

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

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

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

5 Section 846-A. Enforcement procedure.

6           (a) Period of limitations.--

7           (1) Except as otherwise provided in paragraph (2), in  
8           the case of an action brought for a willful violation of the  
9           applicable provisions of this chapter, the action must be  
10           brought within three years of the date of the last event  
11           constituting the alleged violation for which the action is  
12           brought.

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

17           (b) Posting requirements.--A hospital and other medical  
18           facility shall post the provisions of this chapter in a  
19           prominent place for review by the public and the employees. The  
20           posting shall have a title across the top in no less than 35  
21           point, bold typeface stating the following:

22           "RIGHTS OF REGISTERED NURSES AS PATIENT ADVOCATES, EMPLOYEES  
23           AND PATIENTS."

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