

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2742 Session of  
2002

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WASHINGTON, JUNE 25, 2002

REFERRED TO COMMITTEE ON HEALTH AND HUMAN SERVICES,  
JUNE 25, 2002

AN ACT

1 Amending the act of July 19, 1979 (P.L.130, No.48), entitled "An  
2 act relating to health care; prescribing the powers and  
3 duties of the Department of Health; establishing and  
4 providing the powers and duties of the State Health  
5 Coordinating Council, health systems agencies and Health Care  
6 Policy Board in the Department of Health, and State Health  
7 Facility Hearing Board in the Department of Justice;  
8 providing for certification of need of health care providers  
9 and prescribing penalties," further providing for purposes,  
10 for definitions, for powers of the Department of Health, for  
11 administration and for licensure; providing for compliance  
12 with staffing plans and recordkeeping, for work assignment  
13 policies and for public disclosure of staffing requirements;  
14 further providing for license standards, reliance on  
15 accrediting agencies and Federal Government, for medical  
16 assistance payments and for civil penalties; and providing  
17 for private cause of action, for grants and loan programs for  
18 nurse recruitment.

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

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

1 Section 102. Purposes.

2 The General Assembly finds [that] as follows:

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

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

1 the highest percentage of direct health care staff in acute  
2 care facilities and have a central role in health care  
3 delivery. To ensure the adequate protection and care for  
4 patients in health care facilities it is essential that  
5 qualified registered nurses be accessible and available to  
6 meet the nursing needs of patients. The basic principles of  
7 staffing in health care facilities should be focused on  
8 patient health care needs and based on consideration of  
9 patient acuity levels and services that need to be provided  
10 to ensure optimal outcomes.

11 The setting of staffing standards for registered nurses is not  
12 to be interpreted as justifying the understaffing of other  
13 critical health care workers, including licensed practical  
14 nurses and unlicensed assistive personnel. Indeed, the  
15 availability of these other health care workers enables  
16 registered nurses to focus on the nursing care functions that  
17 only registered nurses, by law, are permitted to perform and  
18 thereby helps to ensure adequate staffing levels. Establishing  
19 staffing standards for registered nurses in acute care  
20 facilities ensures that health care facilities throughout this  
21 Commonwealth operate in a manner that guarantees the public  
22 safety and the delivery of quality health care services. In  
23 order to meet these standards incentives must be created to  
24 increase the number of registered nurses within this  
25 Commonwealth.

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

28 Section 103. Definitions.

29 The following words and phrases when used in this act shall  
30 have, unless the context clearly indicates otherwise, the

1 meanings given to them in this section:

2 \* \* \*

3 "Acuity system." An established measurement instrument which  
4 predicts nursing care requirements for individual patients based  
5 on severity of patient illness, need for specialized equipment  
6 and technology, intensity of nursing interventions required and  
7 the complexity of clinical nursing judgment needed to design,  
8 implement and evaluate the patient's nursing care plan, details  
9 the amount of nursing care needed, both in number of direct care  
10 nurses and in skill mix of nursing personnel required on a daily  
11 basis for each patient in a nursing department or unit and is  
12 stated in terms that readily can be used and understood by  
13 direct-care nurses. The acuity system shall take into  
14 consideration the patient care services provided not only by  
15 registered nurses but also by licensed practical nurses and  
16 other health care personnel.

17 "Assessment tool." A measurement system which compares the  
18 staffing level in each nursing department or unit against actual  
19 patient nursing care requirements in order to review the  
20 accuracy of an acuity system.

21 \* \* \*

22 "Direct-care nurse." A registered nurse who has direct  
23 responsibility to oversee or carry out medical regimens, nursing  
24 or other bedside care for one or more patients.

25 "Documented staffing plan." A detailed written plan setting  
26 forth the minimum number and classification of direct-care  
27 nurses required in each nursing department or unit in the health  
28 facility for a given year, based on reasonable projections  
29 derived from the patient census and average acuity level within  
30 each department or unit during the prior year, the department or

1 unit size and geography, the nature of services provided and any  
2 foreseeable changes in department or unit size or function  
3 during the current year.

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

6 \* \* \*

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

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

15 \* \* \*

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

18 \* \* \*

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

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

23 Section 803. Powers of the Department of Health.

24 The Department of Health shall have the power and its duty  
25 shall be:

26 (1) to promulgate, after consultation with the policy  
27 board, the rules and regulations necessary to carry out the  
28 purposes and provisions of this chapter[; and], including  
29 regulations defining terms, setting forth direct-care nurse-  
30 to-patient ratios and prescribing the process for approving

1     acuity systems;

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

5           (3) to promulgate, within six months of the effective  
6     date of this paragraph, regulations providing for an  
7     accessible and confidential system to report the failure to  
8     comply with requirements of this chapter and public access to  
9     information regarding reports of inspections, results,  
10    deficiencies and corrections under this chapter.

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

13    Section 804. Administration.

14       \* \* \*

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

19    Section 806. Licensure.

20       \* \* \*

21       (h) Staffing requirements.--Each health care facility, other  
22    than an extended care facility, licensed pursuant to this act  
23    shall ensure that it is staffed in a manner that provides  
24    sufficient, appropriately qualified direct-care nurses in each  
25    department or unit within the facility in order to meet the  
26    individualized care needs of its patients and to meet all of the  
27    following requirements:

28           (1) As a condition of licensing, each facility annually  
29     shall submit to the department a documented staffing plan  
30     together with a written certification that the staffing plan

1 is sufficient to provide adequate and appropriate delivery of  
2 health care services to patients for the ensuing year and  
3 does all of the following:

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

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

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

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

17 (v) factors in the staffing level of and services  
18 provided by other health care personnel in meeting  
19 patient care needs;

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

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

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

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

classification; and

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

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

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

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

(iii) One nurse to three patients: antepartum, emergency room, pediatrics, step-down and telemetry units.

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

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

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

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

(3) The ratios set forth in paragraph (2) shall constitute the minimum number of direct-care nurses to be



1 allocated within a department or unit. Additional direct-care  
2 nurses must be added and the ratio adjusted to ensure  
3 adequate staffing of each nursing department or unit, in  
4 accordance with an approved acuity system.

5 (4) Nothing shall preclude the department from  
6 establishing and requiring a staffing plan to have higher  
7 nurse-to-patient ratios than those set forth in paragraph  
8 (2).

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

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

14 Section 806.2. Compliance with staffing plan and recordkeeping.

15 (a) Plan.--As a condition of licensing, a health care  
16 facility required to have a staffing plan under section 806(h)  
17 shall at all times staff in accordance with its staffing plan  
18 and the staffing standards set forth under section 806(h),  
19 provided that nothing herein shall be deemed to preclude any  
20 such health care facility from implementing higher direct-care  
21 nurse-to-patient staffing levels, nor shall the requirements set  
22 forth be deemed to supersede or replace any higher requirements  
23 otherwise mandated by law, regulation or contract.

24 (b) Appropriate license required.--For purposes of  
25 compliance with the minimum staffing requirements standards set  
26 forth under section 806(h), no nurse shall be assigned, or  
27 included in the count of assigned nursing staff in a nursing  
28 department or unit or a clinical area within the health facility  
29 unless that nurse has an appropriate license under the  
30 applicable registered nurse law, received prior orientation in

1 that clinical area sufficient to provide competent nursing care  
2 to the patients in that area, and has demonstrated current  
3 competence in providing care in that area.

4 (c) Daily records.--As a condition of licensure, each health  
5 care facility required to have a staffing plan under section  
6 806(h) shall maintain accurate daily records showing:

7 (1) The number of patients admitted, released and  
8 present in each nursing department or unit within the  
9 facility.

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

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

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

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

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

27 Section 806.3. Work assignment policy.

28 (a) Written policy.--As a condition of licensure, each  
29 health care facility other than an extended care facility shall  
30 adopt, disseminate to direct-care nurses and comply with a

1 written policy that meets the requirements of this section,  
2 detailing the circumstances under which a direct-care nurse may  
3 refuse a work assignment.

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

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

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

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

16 (1) Reasonable requirements for prior notice to the  
17 nurse's supervisor regarding the nurse's request and  
18 supporting reasons for being relieved of the assignment or  
19 continued duty.

20 (2) Where feasible, an opportunity for the supervisor to  
21 review the specific conditions supporting the nurse's  
22 request, and to decide whether to remedy the conditions, to  
23 relieve the nurse of the assignment or to deny the nurse's  
24 request to be relieved of the assignment or continued duty.

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

28 (i) the supervisor rejects the request without  
29 proposing a remedy or the proposed remedy would be  
30 inadequate or untimely;

1           (ii) the complaint and investigation process with a  
2           regulatory agency would be untimely to address concern;  
3           and

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

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

11 Section 806.4. Public disclosure of staffing requirements.

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

14           (1) Post in a conspicuous place readily accessible to  
15           the general public a notice prepared by the department  
16           setting forth the mandatory provisions of this act relating  
17           to staffing together with a statement of the mandatory and  
18           actual daily nurse staffing levels in each nursing department  
19           or unit.

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

22           (3) Make readily available to the nursing staff with a  
23           department or unit, during each work shift, the following  
24           information:

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

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

30           (iii) Documentation of the actual number of direct-

1           care nurses present during the shift.

2           Section 6. Section 808(a) of the act, amended December 18,  
3           1992 (P.L.1602, No.179), is amended to read:

4           Section 808. Issuance of license.

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

8                 (1) that the health care provider is a responsible  
9           person;

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

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

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

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

21                (6) in the case of a health care facility required to  
22           have a staffing plan under section 806(h), that the facility  
23           has submitted a documented staffing plan and is operating in  
24           compliance with the requirements of this chapter and in  
25           applicable regulations.

26           \* \* \*

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

29           Section 810. Reliance on accrediting agencies and Federal  
30                                 Government.

1       \* \* \*

2       (d) Delegation prohibited.--This section shall not be  
3 construed to permit the department to delegate any of its  
4 functions with respect to the staffing requirements of this  
5 chapter.

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

8       Section 815. Effect of departmental orders.

9       \* \* \*

10       (c) Medical assistance payments.--Orders of the department,  
11 to the extent that they are sustained by the board, which fail  
12 to renew a license or which suspend or revoke a license, shall  
13 likewise revoke or suspend certification of the facility as a  
14 medical assistance provider, and no medical assistance payment  
15 for services rendered subsequent to the final order shall be  
16 made during the pendency of an appeal for the period of  
17 revocation or suspension without an order of supersedeas by the  
18 appellate court. Any health care facility that falsifies or  
19 causes to be falsified documentation required by this act shall  
20 be prohibited from receiving any medical assistance payment for  
21 a period of six months subsequent to the final order of  
22 violation.

23       Section 9. Section 817(b) of the act, amended December 18,  
24 1992 (P.L.1602, No.179), is amended and the section is amended  
25 by adding subsections to read:

26       Section 817. Actions against violations of law, rules and  
27                               regulations.

28       \* \* \*

29       (b) Civil penalty.--Any person, regardless of whether such  
30 person is a licensee, who has committed a violation of any of

1 the provisions of this chapter or of any rule or regulation  
2 issued pursuant thereto, including failure to correct a serious  
3 licensure violation (as defined by regulation) within the time  
4 specified in a deficiency citation, may be assessed a civil  
5 penalty by an order of the department of up to \$500 for each  
6 deficiency for each day that each deficiency continues[.],  
7 provided that a health care facility required to have a staffing  
8 plan under section 806(h) that fails to comply with the  
9 requirements of section 806.2(c) and reporting requirements of  
10 this act may be assessed a civil penalty by an order of the  
11 department of up to \$10,000 for each day of noncompliance. Civil  
12 penalties shall be collected from the date the facility receives  
13 notice of the violation until the department confirms correction  
14 of such violation.

15 \* \* \*

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

23 (f) Private right of action.--Any health care facility other  
24 than an extended care facility which violates the rights of an  
25 employee set forth in subsection (e) or under an adopted work  
26 assignment policy under section 806.3 may be held liable to such  
27 employee in an action brought in a court of competent  
28 jurisdiction for such legal or equitable relief as may be  
29 appropriate to effectuate the purposes of this act, including,  
30 but not limited to, reinstatement, promotion, lost wages and

benefits, and compensatory and consequential damages resulting from the violations together with an equal amount in liquidated damages. The court in such action shall, in addition to any judgment awarded to the plaintiffs, award reasonable attorney fees and costs of action to be paid by the defendants. The employee's right to institute a private action is not limited by any other rights granted under this act.

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

(a) Nurse recruitment grant program.--

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

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

(3) Grants shall be available to:

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

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

(iii) Provide scholarships and/or tuition reimbursement to Pennsylvania residents from diverse racial and ethnic backgrounds who want to become registered nurses. To be eligible for a scholarship or



1        tuition reimbursement, students shall meet designated  
2        academic criteria and be accepted into an approved  
3        nursing program. Scholarships and/or tuition  
4        reimbursement may be conditioned on a commitment of paid  
5        service up to three years. Preference for scholarships  
6        shall be given to students who are from under-represented  
7        ethnic and minority backgrounds or who are otherwise  
8        under-represented in the profession of nursing. Students  
9        who are awarded the scholarships owe the hospital three  
10       years of service at full pay or else face a penalty of  
11       treble the scholarship amount plus interest.

12       (b) Career ladder grant program.--

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

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

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

29       Section 11. This act shall take effect in one year.