

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 171 Session of  
2007

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YOUNGBLOOD AND YUDICHAK, FEBRUARY 1, 2007

REFERRED TO COMMITTEE ON HEALTH AND HUMAN SERVICES,  
FEBRUARY 1, 2007

AN ACT

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

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

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

1 Section 102. Purposes.

2 The General Assembly finds [that] as follows:

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

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

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

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

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

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

5 Section 103. Definitions.

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

9 \* \* \*

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

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

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

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

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

30 \* \* \*

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

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

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

16 \* \* \*

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

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

25 \* \* \*

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

28 \* \* \*

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

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

Section 803. Powers of the Department of Health.

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

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

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

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

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

Section 804. Administration.

\* \* \*

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

Section 806. Licensure.

\* \* \*

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

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

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

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

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

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

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

1 required by licensing law or regulations or accepted  
2 standards of practice to be performed by a registered  
3 nurse are to be performed by other personnel;

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

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

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

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

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

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

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

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

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



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

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

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

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

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

19          (4) Nothing shall preclude the department from  
20          establishing and requiring a staffing plan to have higher  
21          nurse-to-patient ratios than those set forth in paragraph  
22          (2).

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

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

28          Section 806.5. Compliance with staffing plan and recordkeeping.

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

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

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

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

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

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

30 (3) The identity and duty hours of each direct-care

nurse in each nursing department or unit within the facility.

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

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

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

Section 806.6. Work assignment policy.

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

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

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

(2) The assignment otherwise would violate requirements

1     under this act.

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

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

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

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

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

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

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

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

29 Section 806.7. Public disclosure of staffing requirements.

30 As a condition of licensing, a health care facility required

1 to have a staffing plan under section 806(h) shall:

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

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

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

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

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

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

20 Section 6. Section 808(a) of the act, amended December 18,  
21 1992 (P.L.1602, No.179), is amended to read:

22 Section 808. Issuance of license.

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

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

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

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

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

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

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

14 \* \* \*

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

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

19 \* \* \*

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

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

26 Section 815. Effect of departmental orders.

27 \* \* \*

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

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

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

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

16 \* \* \*

17 (b) Civil penalty.--

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

1 each day of noncompliance. Civil penalties shall be collected  
2 from the date the facility receives notice of the violation  
3 until the department confirms correction of such violation.

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

10 \* \* \*

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

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



employee's right to institute a private action is not limited by  
any other rights granted under this act.

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

(a) Nurse recruitment grant program.--

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

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

(3) Grants shall be available to:

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

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

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

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

7       (b) Career ladder grant program.--

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

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

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

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

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

27          (2) This section shall take effect immediately.

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