AN ACT

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

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

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

Section 102. Purposes.
The General Assembly finds [that] as follows:

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

(2) That a substantial interest exists in assuring that delivery of health care services to patients in health care facilities located within this Commonwealth is adequate and safe and that health care facilities retain sufficient nursing staff so as to promote optimal health care outcomes. Inadequate hospital staffing results in dangerous medical errors and patient infections. Registered nurses constitute the highest percentage of direct health care staff in acute...
care facilities and have a central role in health care delivery. To ensure the adequate protection and care for patients in health care facilities it is essential that qualified registered nurses be accessible and available to meet the nursing needs of patients. Inadequate and poorly monitored nurse staffing practices which result in having too few registered nurses providing care jeopardize delivery of quality health care services and adversely impact the health of patients who enter hospitals and outpatient emergency and surgical centers. The basic principles of staffing in health care facilities should be focused on patient health care needs and based on consideration of patient acuity levels and services that need to be provided to ensure optimal outcomes. While the focus of this act is on registered nurses who are principal caregivers, safe staffing practices recognize the importance of all health care workers in providing quality patient care. The setting of staffing standards for registered nurses is not to be interpreted as justifying the understaffing of other critical health care workers, including licensed practical nurses, social workers and unlicensed assistive personnel. Indeed, the availability of these other health care workers enables registered nurses to focus on the nursing care functions that only registered nurses, by law, are permitted to perform and thereby helps to ensure adequate staffing levels. Establishing staffing standards for registered nurses in acute care facilities ensures that health care facilities throughout this Commonwealth operate in a manner that guarantees the public safety and the delivery of quality health care services. In order to meet these standards incentives must be created to increase the number of registered nurses within this
Section 2. Section 103 of the act is amended by adding definitions to read:

Section 103. Definitions.

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

* * *

"Acuity system." An established measurement instrument that:

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

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

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

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

* * *

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

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

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

* * *

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

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

* * *

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

* * *

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

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


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.

* * *

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

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

   (i) meets the minimum requirements of paragraph (2);
   (ii) meets any additional requirements of other laws
       or regulations;
   (iii) employs and identifies an approved acuity
       system for addressing fluctuations in actual patient
       acuity levels and nursing care requirements requiring
       increased staffing levels above the minimums set forth in
       the plan;
   (iv) factors in other unit or department activity
       such as discharges, transfers and admissions,
       administrative and support tasks that are expected to be
       done by direct-care nurses in addition to direct nursing
       care;
   (v) factors in the staffing level of and services
       provided by other health care personnel in meeting
       patient care needs, except that the staffing plan may not
       incorporate or assume that nursing care functions
       required by licensing law or regulations or accepted
standards of practice to be performed by a registered
nurse are to be performed by other personnel;

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

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

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

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

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

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

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

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

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

(iv) One nurse to four patients: intermediate care
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, the direct-care nurse-to-patient ratio as established by the department.

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

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

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

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

Section 806.5. Compliance with staffing plan and recordkeeping.

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 806.7. Public disclosure of staffing requirements.

As a condition of licensing, a health care facility required to have a staffing plan under section 806(h) shall:
(1) Post in a conspicuous place readily accessible to
the general public a notice prepared by the department
setting forth the mandatory provisions of this act relating
to staffing together with a statement of the mandatory and
actual daily nurse staffing levels in each nursing department
or unit.

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

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

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

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

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

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

Section 808. Issuance of license.

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

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

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

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

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

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

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

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

Section 810. Reliance on accrediting agencies and Federal Government.

* * *

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

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

Section 815. Effect of departmental orders.

* * *

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

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

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

* * *

(b) Civil penalty.--

(1) Any person, regardless of whether such person is a licensee, who has committed a violation of any of the provisions of this chapter or of any rule or regulation issued pursuant thereto, including failure to correct a serious licensure violation (as defined by regulation) within the time specified in a deficiency citation, may be assessed a civil penalty by an order of the department of up to $500 for each deficiency for each day that each deficiency continues[, provided that a health care facility required to have a staffing plan under section 806(h) that fails to comply with the requirements of section 806.5(c) and reporting requirements of this act may be assessed a civil penalty by an order of the department of up to $10,000 for each day of noncompliance. Civil penalties shall be collected
from the date the facility receives notice of the violation until the department confirms correction of such violation.

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

* * *

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

(f) Private right of action.--Any health care facility other than an extended care facility that violates the rights of an employee set forth in subsection (e) or under an adopted work assignment policy under section 806.6 may be held liable to the employee in an action brought in a court of competent jurisdiction for the legal or equitable relief as may be appropriate to effectuate the purposes of this act, including, 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 the 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

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

(b) Career ladder grant program.--

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

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

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

Section 11. This act shall take effect as follows:

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

(2) This section shall take effect immediately.

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