

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 846 Session of
2001

INTRODUCED BY SCHWARTZ, COSTA, TARTAGLIONE AND STACK,
MAY 7, 2001

REFERRED TO PUBLIC HEALTH AND WELFARE, MAY 7, 2001

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 staffing,
10 for protection for health care facility employees who
11 initiate or intend or attempt to initiate certain actions
12 related to health care facility care or services and for
13 violations.

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

16 Section 1. Section 802.1 of the act of July 19, 1979
17 (P.L.130, No.48), known as the Health Care Facilities Act, is
18 amended by adding definitions to read:

19 Section 802.1. Definitions.

20 The following words and phrases when used in this chapter
21 shall have, unless the context clearly indicates otherwise, the
22 meanings given them in this section:

23 * * *

1 "Critical care unit." A unit of a hospital that is
2 established to safeguard and protect patients whose severity of
3 medical conditions requires continuous monitoring and complex
4 intervention by professional registered nurses.

5 * * *

6 "Staffing levels." Minimum, specific and numerical licensed
7 nurse to patient ratios by licensed nurse classification and by
8 hospital unit.

9 Section 2. The act is amended by adding sections to read:
10 Section 806.2. Hospital staffing requirements.

11 (a) Staffing plan required.--As a condition of licensure, a
12 hospital shall annually provide to the department a staffing
13 plan for the hospital. The plan shall:

14 (1) state the criteria the hospital will use to
15 establish daily staffing levels. The criteria shall include,
16 but are not limited to, the severity of patient illness, the
17 need for specialized equipment and technology, the complexity
18 of clinical judgment needed to design, implement and evaluate
19 the patient care plan, and the licensure and training of
20 personnel required for care; and

21 (2) be developed with the input of supervisory and
22 nonsupervisory licensed nurses employed by the hospital.

23 (b) Posting of staffing levels.--The daily staffing levels
24 established pursuant to a hospital's staffing plan shall be
25 posted in a conspicuous place at each nursing station in the
26 hospital, and a copy shall be made available upon request to any
27 patient or employee of the hospital.

28 (c) Staffing records.--Upon request of the department a
29 hospital shall provide records of actual daily staffing levels
30 to determine compliance with the hospital's staffing plan.

1 (d) Failure to comply.--The department shall promulgate a
2 form for the reporting of a hospital's failure to comply with
3 its staffing plan. Reports may be made by any person, and the
4 department shall keep the identity of any person making a report
5 confidential. All hospitals shall maintain copies of the form at
6 each nursing station in an easily accessible location to both
7 staff and the public. No hospital shall discharge, discipline or
8 in any manner discriminate or retaliate against any employee who
9 makes a report under this subsection.

10 (e) Department investigation.--Upon investigation of a
11 report filed under subsection (d), the department may order a
12 hospital to revise its staffing plan if the department finds
13 that the plan as submitted is not meeting the needs of patients.
14 If the current staffing plan does not meet the needs of patients
15 or the hospital fails to comply with its staffing plan, the
16 department shall determine the number of personnel to be added,
17 their job classifications, and the basis for the determination,
18 and shall inform the hospital of the determination in writing.
19 The hospital shall comply with the determination within 90 days
20 of its receipt of the determination.

21 (f) Work assignment policy.--As a condition of licensure, a
22 hospital shall adopt and establish in writing a policy whereby a
23 professional registered nurse or a licensed practical nurse
24 shall have the right to refuse a work assignment under the
25 following conditions:

26 (1) the nurse's orientation, education and experience
27 have not adequately prepared the nurse to fulfill the work
28 assignment and places patient health at risk; or

29 (2) the nurse is mandated to work past the end of the
30 nurse's scheduled shift and the nurse's fatigue and decreased

1 mental alertness places patient health at risk.

2 (g) Policy requirements.--The policy established in
3 subsection (f) shall include a protocol for a nurse to follow in
4 exercising the nurse's right to refuse a work assignment. The
5 protocol shall include:

6 (1) A requirement that a nurse inform the nurse's
7 supervisor of the refusal of a work assignment.

8 (2) An opportunity for the supervisor to make
9 accommodations that eliminate the conditions under which a
10 nurse may refuse a work assignment.

11 (3) A requirement that a nurse who exercises the right
12 to refuse a work assignment accept an alternative work
13 assignment if one is made.

14 (h) Retaliation prohibited.--No hospital shall terminate,
15 reprimand, retaliate or otherwise discipline any nurse who
16 exercises the right to refuse a work assignment pursuant to
17 subsection (f) and who follows the protocol as required in
18 subsection (g).

19 (i) Violation.--A nurse who believes that a hospital
20 violated subsection (h) may file an action in a court of
21 competent jurisdiction.

22 (j) Damages.--If a court determines that a violation of
23 subsection (h) has occurred, the court shall award damages as it
24 determines to have resulted from the violation, including,
25 without limitation, compensatory damages, reinstatement,
26 reimbursement of any wages, salary, employment benefits or other
27 compensation denied to or lost by the nurse as a result of the
28 violation, attorney fees and costs, including, without
29 limitation, fees for expert witnesses and punitive damages, if
30 the facts warrant. The court shall award interest on the amount

1 of damages awarded at the prevailing rate.

2 (k) Additional relief.--The court may grant any equitable
3 relief it considers appropriate, including, without limitation,
4 the issuance of a temporary, preliminary or permanent
5 injunction.

6 (l) Limitation.--An action must be brought pursuant to this
7 section within two years after the date of the last event
8 constituting the alleged violation for which the action is
9 brought.

10 Section 822. Whistle blower provisions.

11 (a) General rule.--A person may not retaliate or
12 discriminate in any manner against an employee of a health care
13 facility or a person acting on behalf of the employee who in
14 good faith:

15 (1) Disclosed information relating to the care or
16 services provided by or conditions at a health care facility.

17 (2) Advocated on behalf of a patient with respect to the
18 care or services provided by or conditions at a health care
19 facility.

20 (3) Initiated, cooperated or otherwise participated in
21 an investigation or proceeding conducted by a governmental
22 entity relating to the care or services provided by or
23 conditions at a health care facility.

24 (b) Attempt or intent to act.--A person may not retaliate or
25 discriminate in any manner against an employee of a health care
26 facility because the employee has attempted or intends to engage
27 in an action described in subsection (a).

28 (c) Contract or policy provisions.--A person may not
29 prohibit, restrict or attempt to prohibit or restrict by
30 contract, policy procedure or any other manner the right of an

employee of a health care facility to engage in an action described in subsection (a).

(d) Confidentiality.--The identity of an employee of a health care facility who discloses information in good faith to a governmental entity regarding the care or services provided by or conditions at a health care facility is confidential and must not be disclosed by a person unless:

(1) The employee consents in writing to the disclosure.

(2) There is imminent danger to public health or safety or the threat of physical harm.

(e) Exception.--This section does not protect the disclosure of information that would violate Federal or State law or diminish or impair the rights of a person to the continued protection of confidentiality of communications provided by Federal or State law.

(f) Good faith reports.--An employee of a health care facility acts in good faith if he reasonably believes that:

(1) The information is true.

(2) The information disclosed by the employee:

(i) evidences a violation of any law, rule, regulation or generally recognized professional or clinical standard; or

(ii) related to care or services provided by or conditions at a health care facility that potentially endanger one or more patients or employees or the public.

(g) Violations.--The following apply to violations under this section:

(1) An employee of a health care facility who believes that he has been retaliated or discriminated against in violation of this section may file an action in a court of

1 competent jurisdiction.

2 (2) If a court determines that a violation of this
3 section has occurred, the court shall award such damages as
4 it determines to have resulted from the violation, including,
5 without limitation, compensatory damages, reinstatement,
6 reimbursement of any wages, salary, employment benefits or
7 other compensation denied to or lost by the employee as a
8 result of the violation, attorney fees and costs, including,
9 without limitation, fees for expert witnesses and punitive
10 damages, if the facts warrant. The court shall award interest
11 on the amount of damages awarded at the prevailing rate.

12 (3) The court may grant any equitable relief it
13 considers appropriate, including, without limitation, the
14 issuance of a temporary, preliminary or permanent injunction.

15 (4) An action must be brought pursuant to this section
16 within two years after the date of the last event
17 constituting the alleged violation for which the action is
18 brought.

19 (5) A person who violates this section is subject to a
20 civil penalty of not more than \$10,000 for each violation.

21 (6) A person is guilty of a misdemeanor of the first
22 degree if he willfully and repeatedly violates this section
23 and the violation is related to:

24 (i) a pattern or practice of violations;

25 (ii) the quality of care or services provided by or
26 conditions at a health care facility that would likely
27 lead to serious injury or death for patients or employees
28 of the health care facility; or

29 (iii) retaliation against an employee of a health
30 care facility that could lead to serious injury or death.

1 (h) Notice requirements.--The department shall prepare and
2 disseminate to health care facilities a notice that sets forth
3 and summarizes the provisions of this section. A health care
4 facility shall post in a conspicuous place the notice prepared
5 by the department pursuant to this subsection. A health care
6 facility that willfully fails to post the notice is subject to a
7 civil fine not to exceed \$100 for each day that it continues to
8 willfully fail to post the notice.

9 Section 3. This act shall take effect in 60 days.