

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 689 Session of 2009

INTRODUCED BY STOUT, FONTANA, FERLO, MELLOW, WASHINGTON, STACK  
AND BOSCOLA, MARCH 27, 2009

REFERRED TO PUBLIC HEALTH AND WELFARE, MARCH 27, 2009

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, for reliance on  
15 accrediting agencies and Federal Government, for medical  
16 assistance payments and for civil penalties; and providing  
17 for private right 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:

24 Section 102. Purposes.

25 The General Assembly finds [that] as follows:

26 (1) That the health and welfare of Pennsylvania citizens

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

21 (2) That a substantial interest exists in assuring that  
22 delivery of health care services to patients in health care  
23 facilities located within this Commonwealth is adequate and  
24 safe and that health care facilities retain sufficient  
25 nursing staff so as to promote optimal health care outcomes.  
26 Inadequate hospital staffing results in dangerous medical  
27 errors and patient infections. Registered nurses constitute  
28 the highest percentage of direct health care staff in acute  
29 care facilities and have a central role in health care  
30 delivery. To ensure the adequate protection and care for

1 patients in health care facilities it is essential that  
2 qualified registered nurses be accessible and available to  
3 meet the nursing needs of patients. Inadequate and poorly  
4 monitored nurse staffing practices which result in having too  
5 few registered nurses providing care jeopardize delivery of  
6 quality health care services and adversely impact the health  
7 of patients who enter hospitals and outpatient emergency and  
8 surgical centers. The basic principles of staffing in health  
9 care facilities should be focused on patient health care  
10 needs and based on consideration of patient acuity levels and  
11 services that need to be provided to ensure optimal outcomes.  
12 While the focus of this act is on registered nurses who are  
13 principal caregivers, safe staffing practices recognize the  
14 importance of all health care workers in providing quality  
15 patient care. The setting of staffing standards for registered  
16 nurses is not to be interpreted as justifying the understaffing  
17 of other critical health care workers, including licensed  
18 practical nurses, social workers and unlicensed assistive  
19 personnel. Indeed, the availability of these other health care  
20 workers enables registered nurses to focus on the nursing care  
21 functions that only registered nurses, by law, are permitted to  
22 perform and thereby helps to ensure adequate staffing levels.  
23 Establishing staffing standards for registered nurses in acute  
24 care facilities ensures that health care facilities throughout  
25 this Commonwealth operate in a manner that guarantees the public  
26 safety and the delivery of quality health care services. In  
27 order to meet these standards incentives must be created to  
28 increase the number of registered nurses within this  
29 Commonwealth.

30 Section 2. Section 103 of the act is amended by adding

1 definitions to read:

2 Section 103. Definitions.

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

6 \* \* \*

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

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

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

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

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

27 \* \* \*

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

1 patients.

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

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

13 \* \* \*

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

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

22 \* \* \*

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

25 \* \* \*

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

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

30 Section 803. Powers of the Department of Health.

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

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

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

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

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

20 Section 804. Administration.

21 \* \* \*

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

26 Section 806. Licensure.

27 \* \* \*

28 (h) Staffing requirements.--Each health care facility, other  
29 than an extended care facility, licensed pursuant to this act  
30 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;

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

24          Section 5. The act is amended by adding sections to read:  
25          Section 806.5. Compliance with staffing plan and recordkeeping.

26          (a) Plan.--As a condition of licensing, a health care  
27          facility required to have a staffing plan under section 806(h)  
28          shall at all times staff in accordance with its staffing plan  
29          and the staffing standards set forth under section 806(h),  
30          provided that nothing herein shall be deemed to preclude the

1 health care facility from implementing higher direct-care nurse-  
2 to-patient staffing levels, nor shall the requirements set forth  
3 be deemed to supersede or replace any higher requirements  
4 otherwise mandated by law, regulation or contract.

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

19 (c) Daily records.--As a condition of licensure, each health  
20 care facility required to have a staffing plan under section  
21 806(h) shall maintain accurate daily records showing:

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

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

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

29 (d) Daily statistics.--As a condition of licensure, each  
30 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       (1) Reasonable requirements for prior notice to the  
2 nurse's supervisor regarding the nurse's request and  
3 supporting reasons for being relieved of the assignment or  
4 continued duty.

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

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

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

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

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

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

26 Section 806.7. Public disclosure of staffing requirements.

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

29       (1) Post in a conspicuous place readily accessible to  
30 the general public a notice prepared by the department

1 setting forth the mandatory provisions of this act relating  
2 to staffing together with a statement of the mandatory and  
3 actual daily nurse staffing levels in each nursing department  
4 or unit.

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

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

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

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

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

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

19 Section 808. Issuance of license.

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

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

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

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

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

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

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

11       \* \* \*

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

14       Section 810. Reliance on accrediting agencies and Federal  
15               Government.

16       \* \* \*

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

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

23       Section 815. Effect of departmental orders.

24       \* \* \*

25       (c) Medical assistance payments.--Orders of the department,  
26 to the extent that they are sustained by the board, which fail  
27 to renew a license or which suspend or revoke a license, shall  
28 likewise revoke or suspend certification of the facility as a  
29 medical assistance provider, and no medical assistance payment  
30 for services rendered subsequent to the final order shall be

1 made during the pendency of an appeal for the period of  
2 revocation or suspension without an order of supersedeas by the  
3 appellate court. Any health care facility that falsifies or  
4 causes to be falsified documentation required by this act shall  
5 be prohibited from receiving any medical assistance payment for  
6 a period of six months subsequent to the final order of  
7 violation.

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

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

13 \* \* \*

14 (b) Civil penalty.--

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

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

7       \* \* \*

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

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

30       Section 10. The act is amended by adding a section to read:



1 Section 902.2. Nurse recruitment.

2 (a) Nurse recruitment grant program.--

3 (1) The department shall award grants as provided in  
4 this section to increase nursing education opportunities.

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

12 (3) Grants shall be available to:

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

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

19 (iii) Provide scholarships and/or tuition  
20 reimbursement to Pennsylvania residents from diverse  
21 racial and ethnic backgrounds who want to become  
22 registered nurses. To be eligible for a scholarship or  
23 tuition reimbursement, students shall meet designated  
24 academic criteria and be accepted into an approved  
25 nursing program. Scholarships and/or tuition  
26 reimbursement may be conditioned on a commitment of paid  
27 service up to three years. Preference for scholarships  
28 shall be given to students who are from underrepresented  
29 ethnic and minority backgrounds or who are otherwise  
30 under-represented in the profession of nursing. Students

1       who are awarded the scholarships owe the hospital three  
2       years of service at full pay or face a penalty of treble  
3       the scholarship amount plus interest.

4       (b) Career ladder grant program.--

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

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

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

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

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

24           (2) This section shall take effect immediately.

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