
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 106 Session of
2021

INTRODUCED BY MEHAFFIE, TOMLINSON, BOBACK, CIRESI, DEASY,
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POLINCHOCK, ZABEL, TOOHL, RADER, STEPHENS, PENNYCUICK,
MARSHALL AND INNAMORATO, FEBRUARY 24, 2021

REFERRED TO COMMITTEE ON HEALTH, FEBRUARY 24, 2021

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 patient
10 protection.

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

13 Section 1. The act of July 19, 1979 (P.L.130, No.48), known
14 as the Health Care Facilities Act, is amended by adding a
15 chapter to read:

16 CHAPTER 8-A

17 HOSPITAL PATIENT PROTECTION

18 Section 831-A. Scope of chapter.

19 This chapter provides for hospital patient protection.

20 Section 832-A. Purpose.

1 The General Assembly finds that:

2 (1) Health care services are becoming more complex, and
3 it is increasingly difficult for patients to access
4 integrated services.

5 (2) Competent, safe, therapeutic and effective patient
6 care is jeopardized because of staffing changes implemented
7 in response to market-driven managed care.

8 (3) To ensure effective protection of patients in acute
9 care settings, it is essential that qualified direct care
10 registered nurses be accessible and available to meet the
11 individual needs of patients at all times.

12 (4) To ensure the health and welfare of Pennsylvania
13 citizens, mandatory hospital direct care professional nursing
14 practice standards and professional practice protections must
15 be established to assure that hospital nursing care is
16 provided in the exclusive interests of patients.

17 (5) Direct care registered nurses have a fiduciary duty
18 to assigned patients and necessary duty and right of patient
19 advocacy and collective patient advocacy to satisfy
20 professional fiduciary obligations.

21 (6) The basic principles of staffing in hospital
22 settings should be based on the individual patient's care
23 needs, severity of the condition, services needed and the
24 complexity surrounding those services and the skill level of
25 staff.

26 (7) Current unsafe hospital direct care registered nurse
27 staffing practices have resulted in adverse patient outcome.

28 (8) Mandating adoption of uniform, minimum, numerical
29 and specific registered nurse-to-patient staffing ratios by
30 licensed hospital facilities is required for competent, safe,

1 therapeutic and effective professional nursing care, for
2 retention and recruitment of qualified direct care registered
3 nurses and to improve patient outcomes.

4 (9) Direct care registered nurses must be able to
5 advocate for their patients without fear of retaliation from
6 their employer.

7 (10) Whistleblower protections that encourage registered
8 nurses and patients to notify government and private
9 accreditation entities of suspected unsafe patient
10 conditions, including protection against retaliation for
11 refusing unsafe patient care assignments by competent
12 registered nurse staff, will greatly enhance the health,
13 welfare and safety of patients.

14 Section 833-A. Definitions.

15 The following words and phrases when used in this chapter
16 shall have the meaning given to them in this section unless the
17 context clearly indicates otherwise:

18 "Ancillary staff." Personnel employed by or contracted to
19 work at a facility that have an effect on the delivery of
20 quality care to patients, including, but not limited to,
21 licensed practical nurses, unlicensed assistive personnel,
22 service, maintenance, clerical, professional and technical
23 workers and all other health care workers.

24 "Artificial life support." A system that uses medical
25 technology to aid, support or replace a vital function of the
26 body that has been seriously damaged.

27 "Clinical judgment." The application of a direct care
28 registered nurse's knowledge, skill, expertise and experience in
29 making independent decisions about patient care.

30 "Clinical supervision." The assignment and direction of

1 patient care tasks required in the implementation of nursing
2 care for a patient to other licensed nursing staff or to
3 unlicensed staff by a direct care registered nurse in the
4 exclusive interests of the patient.

5 "Competence." The current documented, demonstrated and
6 validated ability of a direct care registered nurse to act and
7 integrate the knowledge, skills, abilities and independent
8 professional judgment that underpin safe, therapeutic and
9 effective patient care and which ability is based on the
10 satisfactory performance of:

11 (1) The statutorily recognized duties and
12 responsibilities of the registered nurses as provided under
13 the laws of this Commonwealth.

14 (2) The standards required under this chapter that are
15 specific to each hospital unit.

16 (3) The scope and standards of practice as established
17 in the American Nurses Association's
18 "Nursing: Scope and Standards of Practice, 3rd Edition" and
19 "Guide to the Code of Ethics for Nurses With Interpretive
20 Statements: Development, Interpretation and Application, 2nd
21 Edition".

22 "Critical access hospital." A health facility designated
23 under a Medicare rural hospital flexibility program established
24 by the Commonwealth and as defined in section 1861(mm) of the
25 Social Security Act (49 Stat. 620, 42 U.S.C. § 1395x(mm)).

26 "Critical care unit" or "intensive care unit." A nursing
27 unit of an acute care hospital that is established to safeguard
28 and protect patients whose severity of medical conditions
29 require continuous monitoring and complex interventions by
30 direct care registered nurses and whose restorative measures

1 require complex monitoring, intensive intricate assessment,
2 evaluation, specialized rapid intervention and the education and
3 teaching of the patient, the patient's family or other
4 representatives by a competent and experienced direct care
5 registered nurse. The term includes an intensive care unit, a
6 burn center, a coronary care unit or an acute respiratory unit.

7 "Direct care registered nurse" or "direct care professional
8 nurse." A registered nurse who:

9 (1) Currently holds an unencumbered license issued by
10 the State Board of Nursing to engage in professional nursing
11 with documented clinical competence as defined in the act of
12 May 22, 1951 (P.L.317, No.69), known as The Professional
13 Nursing Law.

14 (2) Has accepted a direct, hands-on patient care
15 assignment to implement medical and nursing regimens and
16 provide related clinical supervision of patient care while
17 exercising independent professional judgment at all times in
18 the interests of a patient.

19 "Hospital." An entity located in this Commonwealth that is
20 licensed as a hospital under this act. The term includes a
21 critical access and long-term acute care hospital.

22 "Hospital unit" or "clinical patient care area." An
23 intensive care or critical care unit, a burn unit, a labor and
24 delivery room, antepartum and postpartum, a newborn nursery, a
25 postanesthesia service area, an emergency department, an
26 operating room, a pediatric unit, a step-down or intermediate
27 care unit, a specialty care unit, a telemetry unit, a general
28 medical/surgical care unit, a psychiatric unit, a rehabilitation
29 unit or a skilled nursing facility unit as established by the
30 Centers for Disease Control's 2020 edition of "Master CDC

1 Locations and Descriptions" found in "CDC Locations and
2 Descriptions and Instructions for Mapping Patient Care
3 Locations".

4 "Long-term acute care hospital." A hospital or health care
5 facility that specializes in providing acute care to medically
6 complex patients with an anticipated length of stay of more than
7 25 days. The term includes a free-standing and a hospital-
8 within-hospital model of a long-term acute care facility.

9 "Medical/surgical unit." A unit that:

10 (1) Is established to safeguard and protect patients
11 whose severity of illness, including all comorbidities,
12 restorative measures and level of nursing intensity requires
13 continuous care through direct observation by a direct care
14 registered nurse, monitoring, multiple assessments,
15 specialized interventions, evaluations and the education or
16 teaching of a patient's family or other representatives by a
17 competent and experienced direct care registered nurse.

18 (2) May include patients requiring less than intensive
19 care or step-down care and patients receiving 24-hour
20 inpatient general medical care, postsurgical care or both.

21 (3) May include mixed patient populations of diverse
22 diagnoses and diverse age groups, excluding pediatric
23 patients.

24 "Patient assessment." The direct care utilization by a
25 registered nurse of critical thinking, which is the
26 intellectually disciplined process of actively gathering data
27 about a patient's physiological, psychological, sociological and
28 spiritual status and interpreting, applying, analyzing,
29 synthesizing and evaluating data obtained through the registered
30 nurse's direct care, direct observation and communication with

1 others.

2 "Patient classification and acuity tool" or "tool." As
3 follows:

4 (1) A method and process of determining, validating and
5 monitoring individual patient or family care requirements
6 over time in order to assist in determinations such as:

7 (i) Unit staffing.

8 (ii) Patient assignments.

9 (iii) Case mix analysis.

10 (iv) Budget planning and defense.

11 (v) Per patient cost of nursing services.

12 (vi) Variable billing.

13 (vii) Maintenance of quality assurance standards.

14 (2) The method under paragraph (1) utilizes a
15 standardized set of criteria based on evidence-based practice
16 that acts as a measurement tool used to predict registered
17 nursing care requirements for individual patients based on
18 the following:

19 (i) The severity of patient illness.

20 (ii) The need for specialized equipment and
21 technology.

22 (iii) The intensity of required nursing
23 interventions.

24 (iv) The complexity of clinical nursing judgment
25 required to design, implement and evaluate the patient's
26 nursing care plan with consistent professional standards.

27 (v) The ability for self-care, including motor,
28 sensory and cognitive deficits.

29 (vi) The need for advocacy intervention.

30 (vii) The licensure of the personnel required for

1 care.

2 (viii) The patient care delivery model.

3 (ix) The unit's geographic layout.

4 (x) Generally accepted standards of nursing

5 practice, as established by the American Nurses

6 Association's "Nursing: Scope and Standards of Practice,

7 3rd Edition," as well as elements reflective of the

8 unique nature of the acute care hospital's patient

9 population.

10 (3) The method under paragraph (1) determines the

11 additional number of direct care registered nurses and

12 other licensed and unlicensed nursing staff mix the

13 hospital must assign, based on the independent

14 professional judgment of the direct care registered

15 nurse, to meet the individual patient needs at all times.

16 "Professional judgment." The educated, informed and

17 experienced process that a direct care registered nurse

18 exercises in forming an opinion and reaching a clinical

19 decision, in a patient's best interest, based upon analysis of

20 data, information and scientific evidence.

21 "Rehabilitation unit." A functional clinical unit for the

22 provision of those rehabilitation services that restore an ill

23 or injured patient to the highest level of self-sufficiency or

24 gainful employment of which the patient is capable in the

25 shortest possible time, compatible with the patient's physical,

26 intellectual and emotional or psychological capabilities and in

27 accordance with planned goals and objectives.

28 "Safe harbor." A process that:

29 (1) Protects a registered nurse from adverse action by

30 the health care facility where the nurse is working when the

1 nurse makes a good faith request to reject an assignment,
2 based on the nurse's own:

3 (i) education, knowledge, competence and experience;
4 and

5 (ii) immediate assessment of the risk for patient
6 safety or potential violation of the act of May 22, 1951
7 (P.L.317, No.69), known as The Professional Nursing Law,
8 or board of nursing regulations.

9 (2) Provides for further assessment of the situation.

10 "Skilled nursing facility." A functional clinical unit that:

11 (1) Provides skilled nursing care and supportive care to
12 patients whose primary need is for the availability of
13 skilled nursing care on a long-term basis and who are
14 admitted after at least a 48-hour period of continuous
15 inpatient care.

16 (2) Provides at least the following:

17 (i) Medical.

18 (ii) Nursing.

19 (iii) Dietary.

20 (iv) Pharmaceutical services.

21 (v) An activity program.

22 "Specialty care unit." A unit that:

23 (1) Is established to safeguard and protect patients
24 whose severity of illness, including all comorbidities,
25 restorative measures and level of nursing intensity requires
26 continuous care through direct observation by a direct care
27 registered nurse, monitoring, multiple assessments,
28 specialized interventions, evaluations and the education and
29 teaching of a patient's family or other representatives by a
30 competent and experienced direct care registered nurse.

1 (2) Provides intensity of care for a specific medical
2 condition or a specific patient population.

3 (3) Is more comprehensive for the specific condition or
4 disease process than that which is required on a
5 medical/surgical unit and is not otherwise covered by the
6 definitions in this section.

7 "Step-down unit." A unit established:

8 (1) To safeguard and protect patients whose severity of
9 illness, including all comorbidities, restorative measures
10 and level of nursing intensity requires intermediate
11 intensive care through direct observation by the direct care
12 registered nurse, monitoring, multiple assessments,
13 specialized interventions, evaluations and the education and
14 teaching of the patient's family or other representatives by
15 a competent and experienced direct care registered nurse.

16 (2) To provide care to patients with moderate or
17 potentially severe physiologic instability requiring
18 technical support but not necessarily artificial life
19 support.

20 "Technical support." Specialized equipment and direct care
21 registered nurses providing for invasive monitoring, telemetry
22 and mechanical ventilation for the immediate amelioration or
23 remediation of severe pathology for those patients requiring
24 less care than intensive care, but more care than that which is
25 required from medical/surgical care.

26 "Telemetry unit." A unit that:

27 (1) Is established to safeguard and protect patients
28 whose severity of illness, including all comorbidities,
29 restorative measures and level of nursing intensity requires
30 intermediate intensive care through direct observation by a

1 direct care registered nurse, monitoring, multiple
2 assessments, specialized interventions, evaluations and the
3 education and teaching of a patient's family or other
4 representatives by a competent and experienced direct care
5 registered nurse.

6 (2) Is designated for the electronic monitoring,
7 recording, retrieval and display of cardiac electrical
8 signals.

9 Section 834-A. Hospital nursing practice standard.

10 (a) Professional obligation and right.--By virtue of their
11 professional license and ethical obligations, as established by
12 the American Nurses Association's "Nursing: Scope and Standards
13 of Practice, 3rd Edition" and "Guide to the Code of Ethics for
14 Nurses With Interpretive Statements: Development, Interpretation
15 and Application, 2nd Edition" all registered nurses have a duty
16 and right to act and provide care in the exclusive interests of
17 a patient and to act as the patient's advocate, as circumstances
18 require, in accordance with the provisions described in section
19 836-A.

20 (b) Acceptance of patient care assignments.--

21 (1) A direct care registered nurse shall provide
22 competent, safe, therapeutic and effective nursing care to
23 assigned patients.

24 (2) As a condition of licensure, a hospital or other
25 health care facility shall adopt, disseminate to direct care
26 registered nurses and comply with a written policy that
27 details:

28 (i) the circumstances under which a direct care
29 registered nurse may refuse a work assignment and invoke
30 safe harbor; and

1 (ii) the process by which a registered nurse may
2 invoke safe harbor.

3 (3) A work assignment policy shall permit a direct care
4 registered nurse to refuse a patient assignment for which:

5 (i) The nurse does not have the necessary knowledge,
6 judgment, skills and ability to provide the required care
7 without compromising or jeopardizing the patient's
8 safety, the nurse's ability to meet foreseeable patient
9 needs or the nurse's license.

10 (ii) The nurse questions the medical reasonableness
11 of another health care provider's order that the nurse is
12 required to execute.

13 (iii) The assignment otherwise would violate
14 requirements under this act.

15 (4) A work assignment policy shall comply with
16 notification requirements listed under subsection (c).

17 (c) Notification requirements.--The following apply:

18 (1) (i) To invoke safe harbor, a nurse must notify the
19 nurses's immediate supervisor, or the individual who
20 requested the nurse to engage in the assignment or
21 conduct, that the nurse is invoking safe harbor.

22 (ii) The notification must be made before
23 undertaking the assignment or conduct requested unless
24 the initial assignment is modified and, in the nurse's
25 good faith judgment, the change creates a situation that
26 comports with the requirements for invoking safe harbor
27 regarding the modified assignment pursuant to this
28 section.

29 (iii) The content of a notification must meet the
30 requirements for a safe harbor request under paragraph

1 (3).

2 (iv) After receiving a request for safe harbor, the
3 nurse's shift supervisor, or the individual who requested
4 the nurse to engage in the assignment or conduct, must
5 acknowledge the receipt of the request on the safe harbor
6 request form. If the nurse shift supervisor, or the
7 individual who requested the nurse to engage in the
8 assignment or conduct, refuses to sign the form, the
9 nurse requesting safe harbor shall indicate the refusal
10 on the safe harbor request form.

11 (2) (i) If a nurse is unable to complete the form due
12 to immediate patient care needs, the nurse may orally
13 invoke safe harbor by notifying the nurse's shift
14 supervisor, or the individual who requested the nurse to
15 engage in the assignment or conduct, of the request. The
16 form under paragraph (3) must be completed by the nurse
17 before leaving the worksite.

18 (ii) After receiving oral notification of a request,
19 the nurse's shift supervisor, or the individual who
20 requested the nurse to engage in the assignment or
21 conduct, must complete the safe harbor request form,
22 which must be signed and attested to by the requesting
23 nurse and the individual who prepared the form. If either
24 party refuses to sign the form, the refusal shall be
25 documented on the form.

26 (iii) The Department of Health shall create a safe
27 harbor request form to be used by direct care registered
28 nurses invoking safe harbor. The form shall include the
29 following information:

30 (A) the name and signature of the nurse making

1 the request;

2 (B) the date and time of the request;

3 (C) the location where the conduct or assignment
4 that is the subject of the request occurred;

5 (D) the name of the individual who requested the
6 nurse to engage in the conduct or made the assignment
7 that is the subject of the request;

8 (E) the name of the supervisor recording the
9 request, if applicable;

10 (F) an explanation of why the nurse is
11 requesting safe harbor; and

12 (G) a description of the collaboration between
13 the nurse and the supervisor, if applicable.

14 (iv) The nurse invoking safe harbor must retain a
15 copy of the request for safe harbor and forward any
16 supporting documentation to the Department of Health.

17 (v) The committee under section 841-A(d) shall
18 review safe harbor requests. The Department of Health
19 shall make documentation of safe harbor requests for the
20 previous year available to the committee as part of the
21 annual review provided under section 841-A(d).

22 (vi) The Department of Health shall not be required
23 to release documentation related to safe harbor requests
24 available to the public.

25 Section 835-A. Professional duty and right of patient advocacy.

26 The following shall apply:

27 (1) A registered nurse has the professional obligation,
28 and therefore the right, to act as a patient's advocate as
29 circumstances require by:

30 (i) initiating action to improve health care or to

1 change decisions or activities which in the professional
2 judgment of the direct care registered nurse are against
3 the interests or wishes of the patient; or

4 (ii) giving the patient the opportunity to make
5 informed decisions about health care before health care
6 is provided.

7 (2) A registered nurse may not be subject to
8 disciplinary action or other punitive measures as result of
9 refusing an assignment by invoking safe harbor as provided
10 under section 834-A.

11 Section 836-A. Free speech.

12 (a) Prohibition against discharge or retaliation for
13 whistleblowing.--A hospital or other health care facility may
14 not discharge from duty or otherwise retaliate against a direct
15 care registered nurse or other health care professional
16 responsible for patient care who reports unsafe practices or
17 violations of policy, regulation, rule or law.

18 (b) Rights guaranteed as essential to effective patient
19 advocacy.--

20 (1) A direct care registered nurse or other health care
21 professional or worker responsible for patient care in a
22 hospital shall enjoy the right of free speech and shall be
23 protected in the exercise of that right as provided in this
24 section, both during working hours and during off-duty hours.

25 (2) The right of free speech protected by this section
26 is a necessary incident of the professional nurse duty of
27 patient advocacy and is essential to protecting the health
28 and safety of hospital patients and of the people of this
29 Commonwealth.

30 (c) Protected speech.--

1 (1) The free speech protected by this section includes,
2 without limitation, any type of spoken, gestured, written,
3 printed or electronically communicated expression concerning
4 any matter related to or affecting competent, safe,
5 therapeutic and effective nursing care by direct care
6 registered nurses or other health care professionals and
7 workers at the hospital facility, at facilities within large
8 health delivery systems or corporate chains that include the
9 hospital, or more generally within the health care industry.

10 (2) The content of speech protected by this section
11 includes, without limitation, the facts and circumstances of
12 particular events, patient care practices, institutional
13 actions, policies or conditions that may facilitate or impede
14 competent, safe, therapeutic and effective nursing practice
15 and patient care, adverse patient outcomes or incidents,
16 sentinel and reportable events and arguments in support of or
17 against hospital policies or practices relating to the
18 delivery of nursing care.

19 (3) Protected speech under this section includes the
20 reporting, internally, externally or publicly, of actions,
21 conduct, events, practices or other matters that are believed
22 to constitute:

23 (i) a violation of Federal, State or local laws or
24 regulations;

25 (ii) a breach of applicable codes of professional
26 ethics, including the professional and ethical
27 obligations of direct care registered nurses, as
28 established in the American Nurses Association's
29 "Nursing: Scope and Standards of Practice, 3rd Edition"
30 and "Guide to the Code of Ethics for Nurses With

1 Interpretive Statements: Development, Interpretation and
2 Application, 2nd Edition";

3 (iii) matters which, in the independent judgment of
4 the reporting direct care registered nurse, are
5 appropriate or required for disclosure in furtherance and
6 support of the nurse's exercise of patient advocacy
7 duties to improve health care or change decisions or
8 activities which, in the professional judgment of the
9 direct care registered nurse, are against the interests
10 or wishes of the patient or to ensure that the patient is
11 afforded a meaningful opportunity to make informed
12 decisions about health care before it is provided; or

13 (iv) matters as described in subparagraph (iii) made
14 in aid and support of the exercise of patient advocacy
15 duties of direct care registered nurse colleagues.

16 (d) Nondisclosure of confidential information.--Nothing in
17 this section shall be construed to authorize disclosure of
18 private and confidential patient information except where the
19 disclosure is:

20 (1) required by law;

21 (2) compelled by proper legal process;

22 (3) consented to by the patient; or

23 (4) provided in confidence to regulatory or
24 accreditation agencies or other government entities for
25 investigatory purposes or under formal or informal complaints
26 of unlawful or improper practices for purposes of achieving
27 corrective and remedial action.

28 (e) Duty of patient advocacy.--Engaging in free speech
29 activity as described under this section constitutes an exercise
30 of the direct care registered nurse's duty and right of patient

1 advocacy. The subject matter of free speech activity as
2 described in this section is presumed to be a matter of public
3 concern, and the disclosures protected under this section are
4 presumed to be in the public interest.

5 Section 837-A. Protected rights.

6 (a) General rule.--A person shall have the right to:

7 (1) Oppose policies, practices or actions of a hospital
8 or other medical facility that are alleged to violate, breach
9 or fail to comply with any provision of this chapter.

10 (2) Cooperate, provide evidence, testify or otherwise
11 support or participate in any investigation or complaint
12 proceeding under sections 845-A and 846-A.

13 (b) Right to file complaint.--

14 (1) A patient of a hospital or other medical facility
15 aggrieved by the hospital's or facility's interference with
16 the full and free exercise of patient advocacy duties by a
17 direct care registered nurse shall have the right to make or
18 file a complaint, cooperate, provide evidence, testify or
19 otherwise support or participate in any investigation or
20 complaint proceeding under sections 845-A and 846-A.

21 (2) A direct care registered nurse of a hospital or
22 other medical facility aggrieved by the hospital's or
23 facility's interference with the full and free exercise of
24 patient advocacy duties shall have the right to make or file
25 a complaint, cooperate, provide evidence, testify or
26 otherwise support or participate in any investigation or
27 complaint proceeding under sections 845-A and 846-A.

28 Section 838-A. Interference with rights and duties of free
29 speech and patient advocacy prohibited.

30 No hospital or other medical facility or its agents may:

1 (1) interfere with, restrain, coerce, intimidate or deny
2 the exercise of or the attempt to exercise, by a person of a
3 right provided or protected under this chapter; or

4 (2) discriminate or retaliate against a person for
5 opposing a policy, practice or action of the hospital or
6 other medical facility which is alleged to violate, breach or
7 fail to comply with any provisions of this chapter.

8 Section 839-A. No retaliation or discrimination for protected
9 actions.

10 No hospital or other medical facility may discriminate or
11 retaliate in any manner against a patient, employee or contract
12 employee of the hospital or other medical facility or any other
13 person because that person has:

14 (1) presented a grievance or complaint or has initiated
15 or cooperated in an investigation or proceeding of a
16 governmental entity, regulatory agency or private
17 accreditation body;

18 (2) made a civil claim or demand or filed an action
19 relating to the care, services or conditions of the hospital
20 or of any affiliated or related facilities; or

21 (3) made a good faith request to reject an assignment by
22 invoking safe harbor.

23 Section 840-A. Direct care registered nurse-to-patient staffing
24 ratios.

25 (a) General requirements.--A hospital shall provide minimum
26 staffing by direct care registered nurses in accordance with the
27 general requirements of this subsection and the clinical unit or
28 clinical patient care area direct care registered nurse-to-
29 patient ratios specified in subsection (b). Staffing for patient
30 care tasks not requiring a direct care registered nurse is not

1 included within these ratios and shall be determined under a
2 patient classification and acuity tool, this section and section
3 841-A. The requirements are as follows:

4 (1) No hospital may assign a direct care registered
5 nurse to a nursing unit or clinical area unless that hospital
6 and the direct care registered nurse determine that the
7 direct care registered nurse has demonstrated and validated
8 current competence in providing care in that area and has
9 also received orientation to that hospital's clinical area
10 sufficient to provide competent, safe, therapeutic and
11 effective care to patients in that area. The policies and
12 procedures of the hospital shall contain the hospital's
13 criteria for making this determination.

14 (2) (i) Direct care registered nurse-to-patient ratios
15 represent the maximum number of patients that shall be
16 assigned to one direct care registered nurse at all
17 times.

18 (ii) For purposes of this paragraph, "assigned"
19 means the direct care registered nurse has responsibility
20 for the provision of care to a particular patient within
21 the direct care registered nurse's validated competency.

22 (3) There shall be no averaging of the number of
23 patients and the total number of direct care registered
24 nurses on the unit during any one shift nor over any period
25 of time.

26 (4) Only direct care registered nurses providing direct
27 patient care shall be included in the ratios. Nurse
28 administrators, nurse supervisors, nurse managers, charge
29 nurses and case managers may not be included in the
30 calculation of the direct care registered nurse-to-patient

1 ratio. Only direct care registered nurses shall relieve other
2 direct care registered nurses during breaks, meals and other
3 routine, expected absences from the unit.

4 (5) Only direct care registered nurses shall be assigned
5 to intensive care newborn nursery service units, which
6 specifically require one direct care registered nurse to two
7 or fewer infants at all times.

8 (6) In the emergency department, only direct care
9 registered nurses shall be assigned to triage patients, and
10 only direct care registered nurses shall be assigned to
11 critical trauma patients.

12 (b) Unit or patient care areas.--The minimum staffing ratios
13 for general, acute, critical access and specialty hospitals are
14 established in this subsection for direct care registered nurses
15 as follows:

16 (1) The direct care registered nurse-to-patient ratio in
17 an intensive care unit shall be 1:2 or fewer at all times.

18 (2) The direct care registered nurse-to-patient ratio
19 for a critical care unit shall be 1:2 or fewer at all times.

20 (3) The direct care registered nurse-to-patient ratio
21 for a neonatal intensive care unit shall be 1:2 or fewer at
22 all times.

23 (4) The direct care registered nurse-to-patient ratio
24 for a burn unit shall be 1:2 or fewer at all times.

25 (5) The direct care registered nurse-to-patient ratio
26 for a step-down, intermediate care unit shall be 1:3 or fewer
27 at all times.

28 (6) An operating room shall have at least one direct
29 care registered nurse assigned to the duties of the
30 circulating registered nurse and a minimum of one additional

1 person as a scrub assistant for each patient-occupied
2 operating room.

3 (7) The direct care registered nurse-to-patient ratio in
4 the postanesthesia recovery unit of an anesthesia service
5 shall be 1:2 or fewer at all times, regardless of the type of
6 anesthesia the patient received.

7 (8) The direct care registered nurse-to-patient ratio
8 for patients receiving conscious sedation shall be 1:1 at all
9 times.

10 (9) (i) The direct care registered nurse-to-patient
11 ratio for an emergency department shall be 1:4 or fewer
12 at all times.

13 (ii) The direct care registered nurse-to-patient
14 ratio for critical care patients in the emergency
15 department shall be 1:2 or fewer at all times.

16 (iii) Only direct care registered nurses shall be
17 assigned to critical trauma patients in the emergency
18 department, and a minimum direct care registered nurse-
19 to-critical trauma patient ratio of 1:1 shall be
20 maintained at all times.

21 (iv) In an emergency department, triage, radio or
22 specialty/flight, registered nurses do not count in the
23 calculation of direct care registered nurse-to-patient
24 ratio.

25 (10) (i) The direct care registered nurse-to-patient
26 ratio in the labor and delivery suite of prenatal
27 services shall be 1:1 at all times for active labor
28 patients and patients with medical or obstetrical
29 complications.

30 (ii) The direct care registered nurse-to-patient

1 ratio shall be 1:1 at all times for initiating epidural
2 anesthesia and circulation for cesarean delivery.

3 (iii) The direct care registered nurse-to-patient
4 ratio for patients in immediate postpartum shall be 1:2
5 or fewer at all times.

6 (11) (i) The direct care registered nurse-to-patient
7 ratio for antepartum patients who are not in active labor
8 shall be 1:3 or fewer at all times.

9 (ii) The direct care registered nurse-to-patient
10 ratio for patients in a postpartum area of the prenatal
11 service shall be 1:3 mother-baby couplets or fewer at all
12 times.

13 (iii) In the event of cesarean delivery, the total
14 number of mothers plus infants assigned to a single
15 direct care registered nurse shall never exceed four.

16 (iv) In the event of multiple births, the total
17 number of mothers plus infants assigned to a single
18 direct care registered nurse shall not exceed six.

19 (v) For postpartum areas in which the direct care
20 registered nurse's assignment consists of mothers only,
21 the direct care registered nurse-to-patient ratio shall
22 be 1:4 or fewer at all times.

23 (vi) The direct care registered nurse-to-patient
24 ratio for postpartum women or postsurgical gynecological
25 patients shall be 1:4 or fewer at all times.

26 (vii) Well baby nursery direct care registered
27 nurse-to-patient ratio shall be 1:5 or fewer at all
28 times.

29 (viii) The direct care registered nurse-to-patient
30 ratio for unstable newborns and those in the

1 resuscitation period as assessed by the direct care
2 registered nurse shall be 1:1 at all times.

3 (ix) The direct care registered nurse-to-patient
4 ratio for recently born infants shall be 1:4 or fewer at
5 all times.

6 (12) The direct care registered nurse-to-patient ratio
7 for pediatrics shall be 1:3 or fewer at all times.

8 (13) The direct care registered nurse-to-patient ratio
9 in telemetry shall be 1:3 or fewer at all times.

10 (14) (i) The direct care registered nurse-to-patient
11 ratio in medical/surgical shall be 1:4 or fewer at all
12 times.

13 (ii) The direct care registered nurse-to-patient
14 ratios for presurgical and admissions units or ambulatory
15 surgical units shall be 1:4 or fewer at all times.

16 (15) The direct care registered nurse-to-patient ratio
17 in other specialty units shall be 1:4 or fewer at all times.

18 (16) The direct care registered nurse-to-patient ratio
19 in psychiatric units shall be 1:4 or fewer at all times.

20 (17) The direct care registered nurse-to-patient ratio
21 in a rehabilitation unit or a skilled nursing facility shall
22 be 1:5 or fewer at all times.

23 (c) Additional conditions.--

24 (1) Identifying a unit or clinical patient care area by
25 a name or term other than those defined in section 833-A does
26 not affect the requirement to staff at the direct care
27 registered nurse-to-patient ratios identified for the level
28 of intensity or type of care described in section 833-A and
29 this section.

30 (2) (i) Patients shall only be cared for on units or

1 clinical patient care areas where the level of intensity,
2 type of care and direct care registered nurse-to-patients
3 ratios meet the individual requirements and needs of each
4 patient.

5 (ii) The use of patient acuity-adjustable units or
6 clinical patient care areas is prohibited. Units must be
7 staffed at the direct care registered nurse-to-patient
8 ratios for the highest acuity patient as identified for
9 the level and intensity or type of care provided under
10 this section and section 833-A.

11 (3) Video cameras, monitors or any form of electronic
12 visualization of a patient shall not be deemed a substitute
13 for the direct observation required for patient assessment by
14 the direct care registered nurse and for patient protection
15 required by an attendant or sitter.

16 Section 841-A. Hospital unit staffing plans.

17 (a) Patient classification and acuity tool.--

18 (1) In addition to the direct care registered nurse
19 ratio requirements of subsection (b), a hospital shall assign
20 additional nursing staff, such as licensed practical nurses,
21 certified nursing assistants and ancillary staff, through the
22 implementation of a valid patient classification and acuity
23 tool for determining nursing care needs of individual
24 patients that reflects the assessment made by the assigned
25 direct care registered nurse of patient nursing care
26 requirements and provides for shift-by-shift staffing based
27 on those requirements.

28 (2) The ratios specified in subsection (b) shall
29 constitute the minimum number of registered nurses who shall
30 be assigned to direct patient care. Additional registered

1 nursing staff in excess of the prescribed ratios shall be
2 assigned to direct patient care in accordance with the
3 hospital's implementation of a valid system for determining
4 nursing care requirements.

5 (3) Based on the direct care registered nurse assessment
6 as reflected in the implementation of a valid tool and
7 independent direct care registered nurse determination of
8 patient care needs, additional licensed and nonlicensed staff
9 shall be assigned.

10 (b) Development of written staffing plan.--

11 (1) A written staffing plan shall be developed by the
12 chief nursing officer or a designee, based on individual
13 patient care needs determined by the tool. The staffing plan
14 shall be developed and implemented for each patient care unit
15 and shall specify individual patient care requirements and
16 the staffing levels for direct care registered nurses and
17 other licensed and unlicensed personnel. The staffing plan
18 shall ensure that the facility implements the requirements
19 without diminishing the staffing levels of its ancillary
20 staff.

21 (2) In no case may the staffing level for direct care
22 registered nurses on any shifts fall below the requirements
23 of this subsection.

24 (3) The plan shall include the following:

25 (i) Staffing requirements as determined by the tool
26 for each unit, documented and posted on the unit for
27 public view on a day-to-day, shift-by-shift basis.

28 (ii) The actual staff and staff mix provided,
29 documented and posted on the unit for public view on a
30 day-to-day, shift-by-shift basis.

1 (iii) The variance between required and actual
2 staffing patterns, documented and posted on the unit for
3 public view on a day-to-day, shift-by-shift basis.

4 (c) Recordkeeping.--In addition to the documentation
5 required in subsection (b), the hospital shall keep a record of
6 the actual direct care registered nurse, licensed practical
7 nurse and certified nursing assistant assignments to individual
8 patients by licensure category, documented on a day-to-day,
9 shift-by-shift basis. The hospital shall retain:

10 (1) The staffing plan required in subsection (b) for a
11 period of two years.

12 (2) The record of the actual direct care registered
13 nurse, licensed practical nurse and certified nursing
14 assistant assignments by licensure and nonlicensure category.

15 (d) Review committee to conduct annual review of tool.--The
16 reliability of the tool for validating staffing requirements
17 shall be reviewed at least annually by a committee to determine
18 whether the tool accurately measures individual patient care
19 needs and completely predicts direct care registered nurse,
20 licensed practical nurse and certified nursing assistant
21 staffing requirements based exclusively on individual patient
22 needs.

23 (e) Review committee membership.--

24 (1) At least half of the members of the review committee
25 shall be unit-specific, competent direct care registered
26 nurses who provide direct patient care.

27 (2) The members of the committee shall be elected by
28 staff nurses on their respective units, except where direct
29 care registered nurses are represented for collective
30 bargaining purposes, all direct care registered nurses on the

1 committee shall be appointed by the authorized collective
2 bargaining agent.

3 (3) In case of a dispute, the direct care registered
4 nurse assessment shall prevail.

5 (f) Time period for adjustments.--If the review committee
6 determines that adjustments are necessary in order to assure
7 accuracy in measuring patient care needs, the adjustments shall
8 be implemented within 30 days of that determination.

9 (g) Process for staff input.--A hospital shall develop and
10 document a process by which all interested staff may provide
11 input about the tool's required revisions and the overall
12 staffing plan.

13 (h) Limitation on administrator of nursing services.--The
14 administrator of nursing services may not be designated to serve
15 as a charge nurse or to have direct patient care responsibility.

16 (i) Minimum requirement for each shift.--Each patient care
17 unit shall have at least one direct care registered nurse
18 assigned, present and responsible for the patient care in the
19 unit on each shift.

20 (j) Temporary nursing agencies.--

21 (1) Nursing personnel from temporary nursing agencies
22 may not be responsible for patient care on any clinical unit
23 without having demonstrated and validated clinical competency
24 on the assigned unit.

25 (2) A hospital that utilizes temporary nursing agencies
26 shall have and adhere to a written procedure to orient and
27 evaluate personnel from these sources. In order to ensure
28 clinical competence of temporary agency personnel, the
29 procedures shall require that personnel from temporary
30 nursing agencies be evaluated as often, or more often, than

1 staff employed directly by the hospital.

2 (k) Planning for routine fluctuations.--

3 (1) A hospital shall plan for routine fluctuations, such
4 as admissions, discharges and transfers in patient census.

5 (2) If a health care emergency causes a change in the
6 number of patients on a unit, the hospital shall demonstrate
7 immediate and diligent efforts were made to maintain required
8 staffing levels.

9 (3) For purposes of this subsection, "health care
10 emergency" means an emergency declared by the Federal
11 Government or the head of a State, local, county or municipal
12 government.

13 Section 842-A. Minimum requirements for hospital systems.

14 (a) General rule.--A hospital shall:

15 (1) Adopt a patient classification and acuity tool,
16 including a written nursing care staffing plan for each
17 patient care unit.

18 (2) Implement, evaluate and modify the plan as necessary
19 and appropriate under the provisions of this section.

20 (3) Provide direct care registered nurse staffing based
21 on individual patient needs determined in accordance with the
22 requirements of this section.

23 (4) Use the tool to determine additional direct care
24 registered nurse staffing above the minimum staffing ratios
25 required by subsection (b) and any staffing by licensed
26 practical nurses or unlicensed nursing personnel.

27 (b) Required elements.--The tool used by a hospital for
28 determining patient nursing care needs shall include, but not be
29 limited to, the following elements:

30 (1) A method to predict nursing care requirements of

1 individual patient assessments and as determined by direct
2 care registered nurse assessments of individual patients.

3 (2) A method that provides for sufficient direct care
4 registered nursing staffing to ensure that all of the
5 elements in this subsection are performed in the planning and
6 delivery of care for each patient:

7 (i) Assessment.

8 (ii) Nursing diagnosis.

9 (iii) Planning.

10 (iv) Intervention.

11 (3) An established method by which the amount of nursing
12 care needed for each category of patient is validated.

13 (4) A method for validation of the reliability of the
14 tool.

15 (c) Transparency of system.--

16 (1) A tool shall be fully transparent in all respects,
17 including:

18 (i) Disclosure of detailed documentation of the
19 methodology used by the tool to predict nursing staffing.

20 (ii) Identification of each factor, assumption and
21 value used in applying the methodology.

22 (iii) An explanation of the scientific and empirical
23 basis for each assumption and value and certification by
24 a knowledgeable and authorized representative of the
25 hospital that the disclosures regarding methods used for
26 testing and validating the accuracy and reliability of
27 the tool are true and complete.

28 (2) A hospital shall include in the documentation
29 required by this section an evaluation and a report on at
30 least an annual basis, which evaluation and report shall be

1 conducted and prepared by a committee consisting exclusively
2 of direct care registered nurses who have provided direct
3 patient care in the units covered by the tool. Where direct
4 care registered nurses are represented for collective
5 bargaining purposes, all direct care registered nurses on the
6 committee shall be appointed by the authorized collective
7 bargaining agent.

8 (d) Submission to Department of Health.--

9 (1) The documentation required by this section shall be
10 submitted in its entirety to the Department of Health as a
11 mandatory condition of hospital licensure, with a
12 certification by the chief nurse officer for the hospital
13 that the documentation completely and accurately reflects
14 implementation of a valid tool used to determine nursing
15 service staffing by the hospital for every shift on every
16 clinical unit in which patients reside and receive care.

17 (2) The certification shall be executed by the chief
18 nurse officer under penalty of perjury and shall contain an
19 express acknowledgment that any false statement in the
20 certification shall constitute fraud and be subject to
21 criminal and civil prosecution and penalties under the
22 antifraud provisions applicable to false claims for
23 government funds or benefits.

24 (3) The documentation shall be available for public
25 inspection in its entirety in accordance with procedures
26 established by appropriate administrative regulation
27 consistent with the purposes of this chapter.

28 Section 843-A. Prohibited activities.

29 (a) General rule.--The following activities are prohibited:

30 (1) A hospital may not directly assign any unlicensed

1 personnel to perform registered nurse functions in lieu of
2 care delivered by a licensed registered nurse and may not
3 assign unlicensed personnel to perform registered nurse
4 functions under the clinical supervision of a direct care
5 registered nurse.

6 (2) Unlicensed personnel may not perform tasks that
7 require the clinical assessment, judgment and skill of a
8 licensed registered nurse, including, without limitation:

9 (i) Nursing activities that require nursing
10 assessment and judgment during implementation.

11 (ii) Physical, psychological and social assessments
12 that require nursing judgment, intervention, referral or
13 follow-up.

14 (iii) Formulation of a plan of nursing care and
15 evaluation of the patient's response to the care
16 provided.

17 (iv) Administration of medication, venipuncture or
18 intravenous therapy, parenteral or tube feedings,
19 invasive procedures, including inserting nasogastric
20 tubes, inserting catheters or tracheal suctioning.

21 (v) Educating patients and their families concerning
22 the patient's health care problems, including
23 postdischarge care.

24 (b) Mandatory overtime.--A hospital may not impose mandatory
25 overtime requirements to meet the staffing ratios imposed in
26 section 840-A.

27 Section 844-A. Fines and civil penalties.

28 The following fines and penalties shall apply to violations
29 of this chapter:

30 (1) A hospital found to have violated or aided and

1 abetted section 841-A, 842-A or 843-A shall be subject, in
2 addition to any other penalties that may be prescribed by
3 law, to a civil penalty of not more than \$25,000 for each
4 violation and an additional \$10,000 per nursing unit shift
5 until the violation is corrected.

6 (2) A hospital employer found to have violated or
7 interfered with any of the rights or protections provided and
8 guaranteed under sections 836-A, 837-A, 838-A, 839-A and
9 840-A shall be subject to a civil penalty of not more than
10 \$25,000 for each violation or occurrence of prohibited
11 conduct.

12 (3) A hospital management, nursing service or medical
13 personnel found to have violated or interfered with any of
14 the rights or protections provided and guaranteed under
15 sections 836-A, 837-A, 838-A, 839-A and 840-A shall be
16 subject to a civil penalty of not more than \$20,000 for each
17 violation or occurrence of prohibited conduct.

18 Section 845-A. Private right of action.

19 (a) General rule.--A hospital or other health care facility
20 that violates the rights of an employee specified in sections
21 835-A, 836-A, 837-A, 838-A and 839-A 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 chapter,
25 including, but not limited to, reinstatement, promotion, lost
26 wages and benefits and compensatory and consequential damages
27 resulting from the violations together with an equal amount in
28 liquidated damages. The court in the action shall, in addition
29 to any judgment awarded to the plaintiffs, award reasonable
30 attorney fees and costs of action to be paid by the defendants.

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

3 (b) Relief for nurses.--In addition to the amount recovered
4 under subsection (a), a nurse whose employment is suspended or
5 terminated in violation of this section is entitled to:

6 (1) Reinstatement in the nurse's former position or
7 severance pay in an amount equal to three months of the
8 nurse's most recent salary.

9 (2) Compensation for wages lost during the period of
10 suspension or termination.

11 (3) An award of reasonable attorney fees and costs as
12 the prevailing party.

13 Section 846-A. Enforcement procedure.

14 (a) Period of limitations.--

15 (1) Except as otherwise provided in paragraph (2), in
16 the case of an action brought for a willful violation of the
17 applicable provisions of this chapter, the action must be
18 brought within three years of the date of the last event
19 constituting the alleged violation for which the action is
20 brought.

21 (2) An action must be brought under section 845-A no
22 later than two years after the date of the last event
23 constituting the alleged violation for which the action is
24 brought.

25 (b) Posting requirements.--A hospital and other medical
26 facility shall post the provisions of this chapter in a
27 prominent place for review by the public and the employees. The
28 posting shall have a title across the top in no less than 35
29 point, bold typeface stating the following:

30 "RIGHTS OF REGISTERED NURSES AS PATIENT ADVOCATES, EMPLOYEES

1 AND PATIENTS."

2 Section 2. This act shall take effect in 180 days.