AN ACT

Amending the act of July 19, 1979 (P.L.130, No.48), entitled "An act relating to health care; prescribing the powers and duties of the Department of Health; establishing and providing the powers and duties of the State Health Coordinating Council, health systems agencies and Health Care Policy Board in the Department of Health, and State Health Facility Hearing Board in the Department of Justice; providing for certification of need of health care providers and prescribing penalties," providing for hospital patient protection.

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

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

CHAPTER 8-A

HOSPITAL PATIENT PROTECTION

Section 831-A. Scope of chapter.

This chapter provides for hospital patient protection.

Section 832-A. Purpose.

The General Assembly finds that:
(1) Health care services are becoming more complex, and it is increasingly difficult for patients to access integrated services.

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

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

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

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

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

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

(8) Mandating adoption of uniform, minimum, numerical and specific registered nurse-to-patient staffing ratios by licensed hospital facilities is necessary for competent, safe, therapeutic and effective professional nursing care and for retention and recruitment of qualified direct care
registered nurses.

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

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

Section 833-A. Definitions.

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

"Acuity-based patient classification system" or "system." A standardized set of criteria based on scientific data that acts as a measurement instrument used to predict registered nursing care requirements for individual patients based on:

(1) The severity of patient illness.
(2) The need for specialized equipment and technology.
(3) The intensity of required nursing interventions.
(4) The complexity of clinical nursing judgment required to design, implement and evaluate the patient's nursing care plan consistent with professional standards.
(5) The ability for self-care, including motor, sensory and cognitive deficits.
(6) The need for advocacy intervention.
(7) The licensure of the personnel required for care.
(8) The patient care delivery system.
(9) The unit's geographic layout.
(10) Generally accepted standards of nursing practice, as well as elements reflective of the unique nature of the acute care hospital's patient population.

The system determines the additional number of direct care registered nurses and other licensed and unlicensed nursing staff the hospital must assign, based on the independent professional judgment of the direct care registered nurse, to meet the individual patient needs at all times.

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

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

"Clinical supervision." The assignment and direction of patient care tasks required in the implementation of nursing care for a patient to other licensed nursing staff or to unlicensed staff by a direct care registered nurse in the exclusive interests of the patient.

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

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

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

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

"Critical care unit" or "intensive care unit." A nursing unit of an acute care hospital that is established to safeguard and protect patients whose severity of medical conditions require continuous monitoring and complex interventions by direct care registered nurses and whose restorative measures require complex monitoring, intensive intricate assessment, evaluation, specialized rapid intervention and the education and teaching of the patient, the patient's family or other representatives by a competent and experienced direct care registered nurse. The term includes an intensive care unit, a burn center, a coronary care unit or an acute respiratory unit.

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

(1) Is currently licensed by the State Board of Nursing to engage in professional nursing with documented clinical competence as defined in the act of May 22, 1951 (P.L.317, No.69), known as The Professional Nursing Law.

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

"Hospital." An entity located in this Commonwealth that is licensed as a hospital under this act. The term includes a critical access and long-term acute care hospital.
"Hospital unit" or "clinical patient care area." An intensive care or critical care unit, a burn unit, a labor and delivery room, antepartum and postpartum, a newborn nursery, a postanesthesia service area, an emergency department, an operating room, a pediatric unit, a step-down or intermediate care unit, a specialty care unit, a telemetry unit, a general medical/surgical care unit, a psychiatric unit, a rehabilitation unit or a skilled nursing facility unit.

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

"Medical/surgical unit." A unit that:

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

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

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

"Patient assessment." The direct care utilization by a registered nurse of critical thinking, which is the
intellectually disciplined process of actively and skillfully interpreting, applying, analyzing, synthesizing and evaluating data obtained through the registered nurse's direct care, direct observation and communication with others.

"Professional judgment." The educated, informed and experienced process that a direct care registered nurse exercises in forming an opinion and reaching a clinical decision, in a patient's best interest, based upon analysis of data, information and scientific evidence.

"Rehabilitation unit." A functional clinical unit for the provision of those rehabilitation services that restore an ill or injured patient to the highest level of self-sufficiency or gainful employment of which the patient is capable in the shortest possible time, compatible with the patient's physical, intellectual and emotional or psychological capabilities and in accordance with planned goals and objectives.

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

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

(2) Provides at least the following:

(i) medical;

(ii) nursing;

(iii) dietary;

(iv) pharmaceutical services; and

(v) an activity program.

"Specialty care unit." A unit that:

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

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

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

"Step-down unit." A unit established:

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

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

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

"Telemetry unit." A unit that:

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

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

Section 834-A. Hospital nursing practice standard.

(a) Professional obligation and right.--By virtue of their
professional license and ethical obligations, all registered
nurses have a duty and right to act and provide care in the
exclusive interests of a patient and to act as the patient's
advocate, as circumstances require, in accordance with the
provisions described in section 836-A.

(b) Acceptance of patient care assignments.--

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

(2) As a condition of licensure, a health care facility
shall adopt, disseminate to direct care nurses and comply
with a written policy that details the circumstances under
which a direct care nurse may refuse a work assignment.

(3) At a minimum, the policy shall permit a direct care
nurse to refuse a patient assignment for which:

(i) the nurse does not have the necessary knowledge,
judgment, skills and ability to provide the required care
without compromising or jeopardizing the patient's
safety, the nurse's ability to meet foreseeable patient
needs or the nurse's license; and

(ii) the assignment otherwise would violate
requirements under this chapter.

(4) At a minimum, the policy shall permit a direct care
nurse to assess an order initiated by a physician or legally
authorized health care professional before implementation to
determine if the order is:

(i) in the best interests of the patient;

(ii) initiated by a person legally authorized to
issue the order; and

(iii) in accordance with applicable law and
regulation governing nursing care.

(5) At a minimum, the work assignment policy shall
contain procedures for the following:

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

(ii) Where feasible, an opportunity for the
supervisor to review the specific conditions supporting
the nurse's request and to decide whether to:

(A) remedy the conditions;

(B) to relieve the nurse of the assignment or

order; or

(C) deny the nurse's request to be relieved of
the assignment, continued duty or implementation of an order.

(iii) A process that permits the nurse to exercise the right to refuse the assignment, continued on-duty status or implementation of an order when the supervisor denies the request to be relieved if:

(A) The supervisor rejects the request without proposing a remedy or the proposed remedy would be inadequate or untimely.

(B) The complaint and investigation process with a regulatory agency would be untimely to address concern.

(C) The employee, in good faith, believes that the assignment or implementation of an order meets conditions justifying refusal.

(iv) A nurse who refuses an assignment or implementation of an order under a work assignment policy established in this section shall not be deemed, by reason thereof, to have engaged in negligent or incompetent action, patient abandonment or otherwise to have violated applicable nursing law.

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

A registered nurse has the professional obligation, and therefore the right, to act as a patient's advocate as circumstances require by:

(1) initiating action to improve health care or to change decisions or activities which in the professional judgment of the direct care registered nurse are against the interests or wishes of the patient; or

(2) giving the patient the opportunity to make informed
decisions about health care before it is provided.

Section 836-A. Free speech.

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

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

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

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

(c) Protected speech.--

(1) The free speech protected by this section includes, without limitation, any type of spoken, gestured, written, printed or electronically communicated expression concerning any matter related to or affecting competent, safe, therapeutic and effective nursing care by direct care registered nurses or other health care professionals and workers at the hospital facility, at facilities within large health delivery systems or corporate chains that include the hospital, or more generally within the health care industry.
(2) The content of speech protected by this section includes, without limitation, the facts and circumstances of particular events, patient care practices, institutional actions, policies or conditions that may facilitate or impede competent, safe, therapeutic and effective nursing practice and patient care, adverse patient outcomes or incidents, sentinel and reportable events and arguments in support of or against hospital policies or practices relating to the delivery of nursing care.

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

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

(ii) a breach of applicable codes of professional ethics, including the professional and ethical obligations of direct care registered nurses;

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

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

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

(1) required by law;
(2) compelled by proper legal process;
(3) consented to by the patient; or
(4) provided in confidence to regulatory or accreditation agencies or other government entities for investigatory purposes or under formal or informal complaints of unlawful or improper practices for purposes of achieving corrective and remedial action.

(e) Duty of patient advocacy.--Engaging in free speech activity as described in this section constitutes an exercise of the direct care registered nurse's duty and right of patient advocacy. The subject matter of free speech activity as described in this section is presumed to be a matter of public concern, and the disclosures protected under this section are presumed to be in the public interest.

Section 837-A. Protected rights.

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

(1) oppose policies, practices or actions of a hospital or other medical facility that are alleged to violate, breach or fail to comply with any provision of this chapter; and
(2) cooperate, provide evidence, testify or otherwise support or participate in any investigation or complaint proceeding under sections 845-A and 846-A.

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

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

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

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

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

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

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

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

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

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

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

(a) General requirements.--A hospital shall provide minimum
staffing by direct care registered nurses in accordance with the
general requirements of this subsection and the clinical unit or
clinical patient care area direct care registered nurse-to-
patient ratios specified in subsection (b). Staffing for patient
care tasks not requiring a direct care registered nurse is not
included within these ratios and shall be determined under an
acuity-based patient classification system, this section and
section 841-A. The requirements are as follows:

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

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

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

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

(4) Only direct care registered nurses providing direct
patient care shall be included in the ratios. Nurse
administrators, nurse supervisors, nurse managers, charge
nurses and case managers may not be included in the
calculation of the direct care registered nurse-to-patient
ratio. Only direct care registered nurses shall relieve other
direct care registered nurses during breaks, meals and other
routine, expected absences from the unit.

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

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

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

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

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

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

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

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

(6) An operating room shall have at least one direct
care registered nurse assigned to the duties of the
circulating registered nurse and a minimum of one additional
person as a scrub assistant for each patient-occupied
operating room.

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

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

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

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

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

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

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

(ii) The direct care registered nurse-to-patient
ratio shall be 1:1 at all times for initiating epidural
anesthesia and circulation for cesarean delivery.

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

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

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

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

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

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

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

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

(viii) The direct care registered nurse-to-patient ratio for unstable newborns and those in the resuscitation period as assessed by the direct care registered nurse shall be 1:1 at all times.

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

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

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

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

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

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

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

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

(c) Additional conditions.--

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

(2) (i) Patients shall only be cared for on units or
clinical patient care areas where the level of intensity,
type of care and direct care registered nurse-to-patients
ratios meet the individual requirements and needs of each
patient.

(ii) The use of patient acuity-adjustable units or
clinical patient care areas is prohibited.

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

Section 841-A. Hospital unit staffing plans.

(a) Acuity-based patient classification system.--

(1) In addition to the direct care registered nurse
ratio requirements of subsection (b), a hospital shall assign additional nursing staff, such as licensed practical nurses and certified nursing assistants, through the implementation of a valid acuity-based patient classification system for determining nursing care needs of individual patients that reflect the assessment made by the assigned direct care registered nurse of patient nursing care requirements and provides for shift-by-shift staffing based on those requirements.

(2) The ratios specified in subsection (b) shall constitute the minimum number of registered nurses who shall be assigned to direct patient care. Additional registered nursing staff in excess of the prescribed ratios shall be assigned to direct patient care in accordance with the hospital's implementation of a valid system for determining nursing care requirements.

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

(b) Development of written staffing plan.--

(1) A written staffing plan shall be developed by the chief nursing officer or a designee, based on individual patient care needs determined by the system. The staffing plan shall be developed and implemented for each patient care unit and shall specify individual patient care requirements and the staffing levels for direct care registered nurses and other licensed and unlicensed personnel.

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

(3) The plan shall include the following:

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

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

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

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

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

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

(d) Review committee to conduct annual review of system.—The reliability of the system for validating staffing requirements shall be reviewed at least annually by a committee to determine whether the system accurately measures individual patient care needs and completely predicts direct care registered nurse, licensed practical nurse and certified nursing assistant staffing requirements based exclusively on individual
(e) Review committee membership.--
   (1) At least half of the members of the review committee shall be unit-specific, competent direct care registered nurses who provide direct patient care.
   (2) The members of the committee shall be appointed by the chief nurse officer, except where direct care registered nurses are represented for collective bargaining purposes, all direct care registered nurses on the committee shall be appointed by the authorized collective bargaining agent.
   (3) In case of a dispute, the direct care registered nurse assessment shall prevail.
(f) Time period for adjustments.--If the review committee determines that adjustments are necessary in order to assure accuracy in measuring patient care needs, the adjustments shall be implemented within 30 days of that determination.
(g) Process for staff input.--A hospital shall develop and document a process by which all interested staff may provide input about the system's required revisions and the overall staffing plan.
(h) Limitation on administrator of nursing services.--The administrator of nursing services may not be designated to serve as a charge nurse or to have direct patient care responsibility.
(i) Minimum requirement for each shift.--Each patient care unit shall have at least one direct care registered nurse assigned, present and responsible for the patient care in the unit on each shift.
(j) Temporary nursing agencies.--
   (1) Nursing personnel from temporary nursing agencies may not be responsible for patient care on any clinical unit.
without having demonstrated and validated clinical competency on the assigned unit.

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

(k) Planning for routine fluctuations.--

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

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

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

Section 842-A. Minimum requirements for hospital systems.

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

(1) Adopt an acuity-based patient classification system, including a written nursing care staffing plan for each patient care unit.

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

(3) Provide direct care nurse staffing based on individual patient need determined in accordance with the requirements of this section.
(4) Use the system to determine additional direct care registered nurse staffing above the minimum staffing ratios required by subsection (b) and any staffing by licensed practical nurses or unlicensed nursing personnel.

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

(1) A method to predict nursing care requirements of individual patient assessments and as determined by direct care registered nurse assessments of individual patients.

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

   (i) assessment;
   (ii) nursing diagnosis;
   (iii) planning; and
   (iv) intervention.

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

(4) A method for validation of the reliability of the system.

(c) Transparency of system.--

(1) A system shall be fully transparent in all respects, including:

   (i) Disclosure of detailed documentation of the methodology used by the system to predict nursing staffing.
   (ii) Identification of each factor, assumption and value used in applying the methodology.
(iii) An explanation of the scientific and empirical basis for each assumption and value and certification by a knowledgeable and authorized representative of the hospital that the disclosures regarding methods used for testing and validating the accuracy and reliability of the system are true and complete.

(2) A hospital shall include in the documentation required by this section an evaluation and a report on at least an annual basis, which evaluation and report shall be conducted and prepared by a committee consisting exclusively of direct care registered nurses who have provided direct patient care in the units covered by the system. Where direct care registered nurses are represented for collective bargaining purposes, all direct care registered nurses on the committee shall be appointed by the authorized collective bargaining agent.

(d) Submission to Department of Health.—

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

(2) The certification shall be executed by the chief nurse officer under penalty of perjury and shall contain an express acknowledgment that any false statement in the certification shall constitute fraud and be subject to criminal and civil prosecution and penalties under the 20170HB1500PN2030
antifraud provisions applicable to false claims for
government funds or benefits.

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

Section 843-A. Prohibited activities.

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

(1) A hospital may not directly assign any unlicensed
personnel to perform registered nurse functions in lieu of
care delivered by a licensed registered nurse and may not
assign unlicensed personnel to perform registered nurse
functions under the clinical supervision of a direct care
registered nurse.

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

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

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

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

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

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

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

Section 844-A. Fines and civil penalties.
The following fines and penalties shall apply to violations
of this chapter:

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

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

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

Section 845-A. Private right of action.

(a) General rule.--A health care facility that violates the
rights of an employee specified in sections 835-A, 836-A, 837-A,
838-A and 839-A may be held liable to the employee in an action.
brought in a court of competent jurisdiction for such legal or
equitable relief as may be appropriate to effectuate the
purposes of this chapter, including, but not limited to,
reinstatement, promotion, lost wages and benefits and
compensatory and consequential damages resulting from the
violations together with an equal amount in liquidated damages.
The court in the action shall, in addition to any judgment
awarded to the plaintiffs, award reasonable attorney fees and
costs of action to be paid by the defendants. The employee's
right to institute a private action is not limited by any other
rights granted under this chapter.

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

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

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

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

Section 846-A. Enforcement procedure.

(a) Period of limitations.--

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

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

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

"RIGHTS OF REGISTERED NURSES AS PATIENT ADVOCATES, EMPLOYEES AND PATIENTS."

Section 2. This act shall take effect in 60 days.