
THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 637 Session of
2013

INTRODUCED BY LEACH, FONTANA, TEPLITZ, WASHINGTON, BREWSTER,
FERLO, FARNESE, STACK, TARTAGLIONE AND KITCHEN,
MARCH 13, 2013

REFERRED TO PUBLIC HEALTH AND WELFARE, MARCH 13, 2013

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.

21 The General Assembly finds that:

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

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

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

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

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

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

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

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

1 registered nurses.

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

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

12 Section 833-A. Definitions.

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

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

20 (1) The severity of patient illness.

21 (2) The need for specialized equipment and technology.

22 (3) The intensity of required nursing interventions.

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

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

28 (6) The need for advocacy intervention.

29 (7) The licensure of the personnel required for care.

30 (8) The patient care delivery system.

1 (9) The unit's geographic layout.

2 (10) Generally accepted standards of nursing practice,
3 as well as elements reflective of the unique nature of the
4 acute care hospital's patient population.

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

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

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

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

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

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

30 (2) The standards required under this chapter that are

1 specific to each hospital unit.

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

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

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

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

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

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

1 "Hospital unit" or "clinical patient care area." An
2 intensive care or critical care unit, a burn unit, a labor and
3 delivery room, antepartum and postpartum, a newborn nursery, a
4 postanesthesia service area, an emergency department, an
5 operating room, a pediatric unit, a step-down or intermediate
6 care unit, a specialty care unit, a telemetry unit, a general
7 medical/surgical care unit, a psychiatric unit, a rehabilitation
8 unit or a skilled nursing facility unit.

9 "Long-term acute care hospital." A hospital or health care
10 facility that specializes in providing acute care to medically
11 complex patients with an anticipated length of stay of more than
12 25 days. The term includes a free-standing and a hospital-
13 within-hospital model of a long-term acute care facility.

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

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

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

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

29 "Patient assessment." The direct care utilization by a
30 registered nurse of critical thinking, which is the

1 intellectually disciplined process of actively and skillfully
2 interpreting, applying, analyzing, synthesizing and evaluating
3 data obtained through the registered nurse's direct care, direct
4 observation and communication with others.

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

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

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

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

23 (2) Provides at least the following:

- 24 (i) medical;
25 (ii) nursing;
26 (iii) dietary;
27 (iv) pharmaceutical services; and
28 (v) an activity program.

29 "Specialty care unit." A unit that:

30 (1) Is established to safeguard and protect patients

1 whose severity of illness, including all comorbidities,
2 restorative measures and level of nursing intensity requires
3 continuous care through direct observation by a direct care
4 registered nurse, monitoring, multiple assessments,
5 specialized interventions, evaluations and the education and
6 teaching of a patient's family or other representatives by a
7 competent and experienced direct care registered nurse.

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

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

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

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

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

27 "Technical support." Specialized equipment and direct care
28 registered nurses providing for invasive monitoring, telemetry
29 and mechanical ventilation for the immediate amelioration or
30 remediation of severe pathology for those patients requiring

1 less care than intensive care, but more care than that which is
2 required from medical/surgical care.

3 "Telemetry unit." A unit that:

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

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

15 Section 834-A. Hospital nursing practice standard.

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

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

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

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

30 (3) At a minimum, the policy shall permit a direct care

1 nurse to refuse a patient assignment for which:

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

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

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

13 (i) in the best interests of the patient;

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

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

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

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

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

27 (A) remedy the conditions;

28 (B) to relieve the nurse of the assignment or
29 order; or

30 (C) deny the nurse's request to be relieved of

1 the assignment, continued duty or implementation of
2 an order.

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

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

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

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

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

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

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

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

30 (2) giving the patient the opportunity to make informed

1 decisions about health care before it is provided.

2 Section 836-A. Free speech.

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

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

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

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

21 (c) Protected speech.--

22 (1) The "free speech" protected by this section
23 includes, without limitation, any type of spoken, gestured,
24 written, printed or electronically communicated expression
25 concerning any matter related to or affecting competent,
26 safe, therapeutic and effective nursing care by direct care
27 registered nurses or other health care professionals and
28 workers at the hospital facility, at facilities within large
29 health delivery systems or corporate chains that include the
30 hospital, or more generally within the health care industry.

1 (2) The content of speech protected by this section
2 includes, without limitation, the facts and circumstances of
3 particular events, patient care practices, institutional
4 actions, policies or conditions that may facilitate or impede
5 competent, safe, therapeutic and effective nursing practice
6 and patient care, adverse patient outcomes or incidents,
7 sentinel and reportable events and arguments in support of or
8 against hospital policies or practices relating to the
9 delivery of nursing care.

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

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

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

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

29 (iv) concern matters as described in subparagraph

30 (iii) made in aid and support of the exercise of patient

1 advocacy duties of direct care registered nurse
2 colleagues.

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

7 (1) required by law;

8 (2) compelled by proper legal process;

9 (3) consented to by the patient; or

10 (4) provided in confidence to regulatory or
11 accreditation agencies or other government entities for
12 investigatory purposes or under formal or informal complaints
13 of unlawful or improper practices for purposes of achieving
14 corrective and remedial action.

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

22 Section 837-A. Protected rights.

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

24 (1) oppose policies, practices or actions of a hospital
25 or other medical facility that are alleged to violate, breach
26 or fail to comply with any provision of this chapter; and

27 (2) cooperate, provide evidence, testify or otherwise
28 support or participate in any investigation or complaint
29 proceeding under sections 845-A and 846-A.

30 (b) Right to file complaint.--

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

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

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

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

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

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

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

28 No hospital or other medical facility employer may
29 discriminate or retaliate in any manner against a patient,
30 employee or contract employee of the hospital or other medical

1 facility or any other person because that person has:

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

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

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

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

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

30 (2) (i) Direct care registered nurse-to-patient ratios

1 represent the maximum number of patients that shall be
2 assigned to one direct care registered nurse at all
3 times.

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

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

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

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

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

28 (b) Unit or patient care areas.--

29 (1) The minimum staffing ratios for general, acute,
30 critical access and specialty hospitals are established in

1 this subsection for direct care registered nurses as follows:

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

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

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

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

13 (v) The direct care registered nurse-to-patient
14 ratio for a step-down, intermediate care unit shall be
15 1:3 or fewer at all times.

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

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

26 (viii) The direct care registered nurse-to-patient
27 ratio for patients receiving conscious sedation shall be
28 1:1 at all times.

29 (ix) (A) The direct care registered nurse-to-
30 patient ratio for an emergency department shall be

1 1:4 or fewer at all times.

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

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

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

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

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

23 (C) The direct care registered nurse-to-patient
24 ratio for patients in immediate postpartum shall be
25 1:2 or fewer at all times.

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

29 (B) The direct care registered nurse-to-patient
30 ratio for patients in a postpartum area of the

1 prenatal service shall be 1:3 mother-baby couplets or
2 fewer at all times.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17 (c) Additional conditions.--

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

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

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

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

6 Section 841-A. Hospital unit staffing plans.

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

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

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

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

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

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

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

11 (3) The plan shall include the following:

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

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

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

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

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

29 (2) The record of the actual direct care registered
30 nurse, licensed practical nurse and certified nursing

1 assistant assignments by licensure and nonlicensure category.

2 (d) Review committee to conduct annual review of system.--

3 The reliability of the system for validating staffing

4 requirements shall be reviewed at least annually by a committee

5 to determine whether the system accurately measures individual

6 patient care needs and completely predicts direct care

7 registered nurse, licensed practical nurse and certified nursing

8 assistant staffing requirements based exclusively on individual

9 patient needs.

10 (e) Review committee membership.--

11 (1) At least half of the members of the review committee

12 shall be unit-specific, competent direct care registered

13 nurses who provide direct patient care.

14 (2) The members of the committee shall be appointed by

15 the chief nurse officer, except where direct care registered

16 nurses are represented for collective bargaining purposes,

17 all direct care registered nurses on the committee shall be

18 appointed by the authorized collective bargaining agent.

19 (3) In case of a dispute, the direct care registered

20 nurse assessment shall prevail.

21 (f) Time period for adjustments.--If the review committee

22 determines that adjustments are necessary in order to assure

23 accuracy in measuring patient care needs, the adjustments shall

24 be implemented within 30 days of that determination.

25 (g) Process for staff input.--A hospital shall develop and

26 document a process by which all interested staff may provide

27 input about the system's required revisions and the overall

28 staffing plan.

29 (h) Limitation on administrator of nursing services.--The

30 administrator of nursing services may not be designated to serve

1 as a charge nurse or to have direct patient care responsibility.

2 (i) Minimum requirement for each shift.--Each patient care
3 unit shall have at least one direct care registered nurse
4 assigned, present and responsible for the patient care in the
5 unit on each shift.

6 (j) Temporary nursing agencies.--

7 (1) Nursing personnel from temporary nursing agencies
8 may not be responsible for patient care on any clinical unit
9 without having demonstrated and validated clinical competency
10 on the assigned unit.

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

18 (k) Planning for routine fluctuations.--

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

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

25 (3) For purposes of this subsection, a "health care"
26 emergency is defined as an emergency declared by the Federal
27 Government or the head of a State, local, county or municipal
28 government.

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

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

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

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

6 (3) Provide direct care nurse staffing based on
7 individual patient need determined in accordance with the
8 requirements of this section.

9 (4) Use the system to determine additional direct care
10 registered nursing staffing above the minimum staffing ratios
11 required by subsection (b) and any staffing by licensed
12 practical nurses or unlicensed nursing personnel.

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

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

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

23 (i) assessment;

24 (ii) nursing diagnosis;

25 (iii) planning; and

26 (iv) intervention.

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

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

1 (c) Transparency of system.--

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

4 (i) Disclosure of detailed documentation of the
5 methodology used by the system to predict nursing
6 staffing.

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

9 (iii) An explanation of the scientific and empirical
10 basis for each assumption and value and certification by
11 a knowledgeable and authorized representative of the
12 hospital that the disclosures regarding methods used for
13 testing and validating the accuracy and reliability of
14 the system are true and complete.

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

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

26 (1) The documentation required by this section shall be
27 submitted in its entirety to the Department of Health as a
28 mandatory condition of hospital licensure, with a
29 certification by the chief nurse officer for the hospital
30 that it completely and accurately reflects implementation of

1 a valid system used to determine nursing service staffing by
2 the hospital for every shift on every clinical unit in which
3 patients reside and receive care.

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

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

15 Section 843-A. Prohibited activities.

16 The following activities are prohibited:

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

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

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

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

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

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

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

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

14 Section 844-A. Fines and civil penalties.

15 The following fines and penalties shall apply to violations
16 of this chapter:

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

23 (2) A hospital employer found to have violated or
24 interfered with any of the rights or protections provided and
25 guaranteed under sections 836-A, 837-A, 838-A, 839-A and
26 840-A shall be subject to a civil penalty of not more than
27 \$25,000 for each violation or occurrence of prohibited
28 conduct.

29 (3) A hospital management, nursing service or medical
30 personnel found to have violated or interfered with any of

1 the rights or protections provided and guaranteed under
2 sections 836-A, 837-A, 838-A, 839-A and 840-A shall be
3 subject to a civil penalty of not more than \$20,000 for each
4 violation or occurrence of prohibited conduct.

5 Section 845-A. Private right of action.

6 (a) General rule.--A health care facility that violates the
7 rights of an employee specified in sections 835-A, 836-A, 837-A,
8 838-A and 839-A may be held liable to the employee in an action
9 brought in a court of competent jurisdiction for such legal or
10 equitable relief as may be appropriate to effectuate the
11 purposes of this chapter, including, but not limited to,
12 reinstatement, promotion, lost wages and benefits and
13 compensatory and consequential damages resulting from the
14 violations together with an equal amount in liquidated damages.
15 The court in the action shall, in addition to any judgment
16 awarded to the plaintiffs, award reasonable attorney fees and
17 costs of action to be paid by the defendants. The employee's
18 right to institute a private action is not limited by any other
19 rights granted under this chapter.

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

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

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

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

30 Section 846-A. Enforcement procedure.

1 (a) Period of limitations.--

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

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

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

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

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