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THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 240 Session of 2021

INTRODUCED BY COLLETT, BROWNE, SCAVELLO, TOMLINSON, COSTA, HUGHES, BREWSTER, FONTANA, STREET, KANE, SANTARSIERO, COMITTA, KEARNEY, SCHWANK, TARTAGLIONE, MUTH, SAVAL, CAPPELLETTI, HAYWOOD AND A. WILLIAMS, AUGUST 27, 2021

REFERRED TO HEALTH AND HUMAN SERVICES, AUGUST 27, 2021

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, severity of the condition, services needed and the complexity surrounding those services and the skill level of staff.

(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 required for competent, safe, therapeutic and effective professional nursing care, for

retention and recruitment of qualified direct care registered nurses and to improve patient outcomes.

(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:

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

"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.

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

"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 requires 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) Currently holds an unencumbered license issued 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 as established by the Centers for Disease Control's 2020 edition of "Master CDC Locations and Descriptions" found in "CDC Locations and Descriptions and Instructions for Mapping Patient Care

Locations".

"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 gathering data about a patient's physiological, psychological, sociological and spiritual status and interpreting, applying, analyzing, synthesizing and evaluating data obtained through the registered nurse's direct care, direct observation and communication with others.

"Patient classification and acuity tool" or "tool." As

follows:

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

(i) Unit staffing.

(ii) Patient assignments.

(iii) Case mix analysis.

(iv) Budget planning and defense.

(v) Per patient cost of nursing services.

(vi) Variable billing.

(vii) Maintenance of quality assurance standards.

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

(i) The severity of patient illness.

(ii) The need for specialized equipment and technology.

(iii) The intensity of required nursing interventions.

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

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

(vi) The need for advocacy intervention.

(vii) The licensure of the personnel required for care.

(viii) The patient care delivery model.

(ix) The unit's geographic layout.

(x) Generally accepted standards of nursing practice, as established by the American Nurses Association's "Nursing: Scope and Standards of Practice, 3rd Edition," as well as elements reflective of the unique nature of the acute care hospital's patient population.

(3) The method under paragraph (1) determines the additional number of direct care registered nurses and other licensed and unlicensed nursing staff mix 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.

"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.

"Safe harbor." A process that:

(1) Protects a registered nurse from adverse action by the health care facility where the nurse is working when the nurse makes a good faith request to reject an assignment, based on the nurse's own:

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

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

(2) Provides for further assessment of the situation.

"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.

(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 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) 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, as established by the American Nurses Association's "Nursing: Scope and Standards of Practice, 3rd Edition" and "Guide to the Code of Ethics for Nurses With Interpretive Statements: Development, Interpretation and Application, 2nd Edition" 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 hospital or other health care facility shall adopt, disseminate to direct care registered nurses and comply with a written policy that details:

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

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

(3) A work assignment policy shall permit a direct care registered 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.

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

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

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

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

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

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

(iii) The content of a notification must meet the requirements for a safe harbor request under paragraph (3).

(iv) After receiving a request for safe harbor, the

nurse's shift supervisor, or the individual who requested the nurse to engage in the assignment or conduct, must acknowledge the receipt of the request on the safe harbor request form. If the nurse shift supervisor, or the individual who requested the nurse to engage in the assignment or conduct, refuses to sign the form, the nurse requesting safe harbor shall indicate the refusal on the safe harbor request form.

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

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

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

(A) the name and signature of the nurse making the request;

(B) the date and time of the request;

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

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

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

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

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

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

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

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

Section 835-A. Professional duty and right of patient advocacy. The following shall apply:

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

(i) 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

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

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

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, as established in the American Nurses Association's "Nursing: Scope and Standards of Practice, 3rd Edition" and "Guide to the Code of Ethics for Nurses With Interpretive Statements: Development, Interpretation and Application, 2nd Edition";

(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) 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 under 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.

(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 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 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;

(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; or

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

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 a patient classification and acuity tool, 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-patient

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. Units must be staffed at the direct care registered nurse-to-patient ratios for the highest acuity patient as identified for the level and intensity or type of care provided under this section and section 833-A.

(3) Video cameras, 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) Patient classification and acuity tool.--

(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, certified nursing assistants and ancillary staff, through the implementation of a valid patient classification and acuity tool for determining nursing care needs of individual patients that reflects 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 tool 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 tool. 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. The staffing plan shall ensure that the facility implements the requirements without diminishing the staffing levels of its ancillary staff.

(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 tool 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 tool.--The reliability of the tool for validating staffing requirements shall be reviewed at least annually by a committee to determine whether the tool 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 patient needs.

(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 elected by staff nurses on their respective units, 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 tool'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 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 a patient classification and acuity tool, 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 registered nurse staffing based on individual patient needs determined in accordance with the requirements of this section.

(4) Use the tool 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 tool 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.

(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 tool.

(c) Transparency of system.--

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

(i) Disclosure of detailed documentation of the methodology used by the tool 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 tool 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 tool. 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 the documentation completely and accurately reflects implementation of a valid tool 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 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 hospital or other 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, boldface type stating the following:

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

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