

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 247 Session of 2023

INTRODUCED BY COLLETT, HAYWOOD, HUGHES, KEARNEY, FONTANA, FLYNN, SCHWANK, KANE, DILLON, TARTAGLIONE, STREET, SAVAL, COSTA, CAPPELLETTI, COMITTA, SANTARSIERO, L. WILLIAMS, BREWSTER, MUTH, A. WILLIAMS AND FARRY, JUNE 2, 2023

REFERRED TO HEALTH AND HUMAN SERVICES, JUNE 2, 2023

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 provisions; and imposing penalties.

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-C

17 HOSPITAL PATIENT PROTECTION PROVISIONS

18 Section 801-C. Definitions.

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

1 "Acuity." The measure of a patient's severity of illness or
2 medical conditions, including, but not limited to, the stability
3 of physiological and psychological parameters and the dependency
4 needs of the patient and the patient's family.

5 "Ancillary staff." Personnel employed by or contracted to
6 work at a facility who have an effect on the delivery of care to
7 patients. The term does not include physicians and registered
8 nurses.

9 "Charge nurse." A registered nurse responsible for the
10 management of a patient care unit.

11 "Department." The Department of Health of the Commonwealth.

12 "Direct care registered nurse." A registered nurse who is
13 engaged in direct patient care responsibilities in an inpatient
14 hospital unit setting for more than 50% of the registered
15 nurse's working hours.

16 "Direct care staff." Any of the following individuals who
17 are routinely assigned to patient care and are replaced when
18 they are absent:

19 (1) registered nurses;

20 (2) licensed practical nurses; or

21 (3) nursing assistants.

22 "Exclusive representative." A labor organization that is:

23 (1) certified as an exclusive representative by the
24 National Labor Relations Board; or

25 (2) a party to a collective bargaining agreement.

26 "Hospital." An institution licensed by this act as a health
27 care facility and having an organized medical staff established
28 for the purpose of providing, by or under the supervision of
29 physicians or advanced practice nurses, diagnostic and
30 therapeutic services for the care of individuals who are

1 injured, disabled, pregnant, diseased, sick or mentally ill or
2 rehabilitation services for the rehabilitation of individuals
3 who are injured, disabled, pregnant, diseased, sick or mentally
4 ill. The term includes a private psychiatric hospital and public
5 psychiatric hospital as defined by 55 Pa. Code § 1151.2
6 (relating to definitions).

7 "Intensive care unit." A unit of a hospital that provides
8 care to critically ill patients who require advanced treatments
9 such as mechanical ventilation, vasoactive infusions or
10 continuous renal replacement treatment or who require frequent
11 assessment and monitoring.

12 "Intermediate care unit." A unit of a hospital that provides
13 progressive care, intensive specialty care or step-down care.

14 "Medical-surgical unit." An inpatient unit in which general
15 medical or post-surgical level of care is provided, excluding a
16 critical care unit and any unit referred to in sections 802-C,
17 803-C, 804-C and 805-C.

18 "Safe harbor." A process that protects a direct care
19 registered nurse from adverse action by the health care facility
20 where the direct care registered nurse accepts an assignment
21 despite objection over the ratios prescribed in section 802-C or
22 the staffing requirements prescribed by the staffing plan in
23 section 804-C.

24 "Unit clerk." A worker on a nursing unit who schedules
25 patients for prescribed studies, prepares charts for patients,
26 answers the phone on the unit and handles other general clerical
27 tasks.

28 Section 802-C. Staffing ratios.

29 (a) General requirement.--A unit and criteria for patients
30 on units shall be consistent with the types of units and

1 patients contained in the Centers for Disease Control and
2 Prevention Locations and Descriptions and Instructions for
3 Mapping Patient Care Locations for types of hospital units.

4 (b) Direct care registered nurses.--A hospital nurse
5 staffing plan must ensure that at any given time:

6 (1) In an emergency department, a direct care registered
7 nurse is assigned to no more than four patients or no more
8 than one trauma patient.

9 (2) In an intensive care unit, a direct care registered
10 nurse is assigned to no more than two patients.

11 (3) In a labor and delivery unit, a direct care
12 registered nurse is assigned to no more than:

13 (i) two patients, if the patients are not in active
14 labor, experiencing complications or in immediate
15 postpartum;

16 (ii) one patient if:

17 (A) the patient is in active labor; or

18 (B) the patient is at any stage of labor and is
19 experiencing complications; or

20 (iii) one patient for the initiation of epidural
21 anesthesia and circulation for cesarean delivery.

22 (4) In a postpartum, antepartum and well-baby nursery, a
23 direct care registered nurse is assigned to no more than six
24 patients, counting mother and baby each as separate patients.

25 (5) In an operating room, a direct care registered nurse
26 is assigned to no more than one patient.

27 (6) In an oncology unit, a direct care registered nurse
28 is assigned to no more than four patients.

29 (7) In a post-anesthesia care unit, a direct care
30 registered nurse is assigned to no more than two patients.

1 (8) In an intermediate care unit, a direct care
2 registered nurse is assigned to no more than three patients.

3 (9) In a medical-surgical unit, a direct care registered
4 nurse is assigned to no more than four patients.

5 (10) In a cardiac telemetry unit, a direct care
6 registered nurse is assigned to no more than three patients.

7 (11) In a pediatric unit, a direct care registered nurse
8 is assigned to no more than three patients.

9 (12) In a presurgical and admissions unit or ambulatory
10 surgical unit, a direct care registered nurse is assigned to
11 no more than four patients.

12 (13) In a burn unit, a direct care registered nurse is
13 assigned to no more than two patients.

14 (14) Any other specialty unit, a direct care registered
15 nurse is assigned to no more than four patients.

16 (15) In an in-patient psychiatric unit, a direct care
17 registered nurse is assigned to no more than four patients.

18 (16) In an in-patient rehabilitation unit, a direct care
19 registered nurse is assigned to no more than five patients.

20 (17) In an operating room, a direct care registered
21 nurse is assigned to no more than one patient.

22 (18) In a unit where a patient is receiving conscious
23 sedation, a direct care registered nurse is assigned to no
24 more than one patient.

25 (c) Assignment of patients.--Patients must be assigned to
26 the appropriate unit to meet care needs.

27 (d) Minimums.--The direct care registered nurse ratios
28 specified in subsection (b) are the minimum required number of
29 nurses.

30 (e) Additional staff.--Additional registered nursing staff

1 in excess of the prescribed ratios in subsection (b) shall be
2 assigned to direct patient care in accordance with the patient's
3 acuity and care needs.

4 Section 803-C. Nurse staffing committee.

5 (a) Establishment.--

6 (1) A hospital shall establish a hospital nurse staffing
7 committee.

8 (2) The staffing committee shall:

9 (i) consist of hospital nurse managers and
10 registered nurse direct care staff;

11 (ii) include at least one direct care registered
12 nurse from each hospital nurse specialty or unit; and

13 (iii) include direct care registered nursing staff
14 who must comprise at least 50% of the total membership of
15 the committee.

16 (3) If any of the direct care registered nurses who work
17 at a hospital are represented under a collective bargaining
18 agreement, the exclusive representative shall select the
19 direct care registered nurse members of the committee.

20 (4) If the direct care registered nurses who work at a
21 hospital are not represented by an exclusive representative,
22 the direct care registered nurses belonging to a hospital
23 nurse specialty or unit shall elect each member of the
24 committee from their peers through an anonymous process.

25 (b) Staffing plan.--A hospital nurse staffing committee
26 shall develop a written hospital-wide staffing plan for direct
27 care staff in accordance with this section and sections 802-C
28 and 804-C. The committee's primary goal in developing the
29 staffing plan shall be to ensure that the hospital is staffed to
30 meet the health care needs of patients. The committee shall

1 review and modify the staffing plan in accordance with this
2 section.

3 (c) Quorum.--A majority of the members of a hospital nurse
4 staffing committee constitutes a quorum for the transaction of
5 business.

6 (d) Cochairs to be elected.--A hospital nurse staffing
7 committee must have two cochairs. One cochair must be a hospital
8 nurse manager elected by the members of the committee who are
9 hospital nurse managers and one cochair must be a direct care
10 registered nurse elected by the members of the committee who are
11 direct care staff.

12 (e) Voting.--A decision made by a hospital nurse staffing
13 committee must be made by a vote of a majority of the members of
14 the committee present at a meeting. If the members present at a
15 meeting consists of less than 50% direct care registered nurses,
16 the vote shall be held by a group of the members, who must be at
17 least 50% direct care registered nurses.

18 (f) Meetings.--A hospital nurse staffing committee shall
19 meet:

20 (1) At least once every three months.

21 (2) At any time and place specified by either cochair.

22 (g) Open meetings.--A hospital nurse staffing committee
23 meeting shall be open to:

24 (1) The hospital direct care staff, as observers.

25 (2) Other observers or presenters, upon invitation by
26 either cochair.

27 (h) Excluded individuals.--At any time, either cochair may
28 exclude individuals described in subsection (g) from a committee
29 meeting for purposes related to deliberation and voting.

30 (i) Minutes.--The minutes of a hospital nurse staffing

1 committee meeting shall:

2 (1) Include motions made and outcomes of votes taken.

3 (2) Summarize discussions.

4 (3) Be posted online and in a physical location visible
5 to hospital staff in a timely manner.

6 (j) Release required.--A hospital shall release a member of
7 a hospital nurse staffing committee from the member's duties to
8 attend a committee meeting and provide paid leave.

9 Section 804-C. Staffing plans.

10 (a) Duty of hospital.--A hospital shall implement the
11 written hospital-wide staffing plan for nursing services that
12 meets the requirements of this chapter and that has been
13 developed and approved by the hospital nurse staffing committee.

14 (b) Requirements.--The staffing plan shall:

15 (1) Be based on the specialized qualifications and
16 competencies of the nursing staff and provide for the skill
17 mix and level of competency necessary to ensure that the
18 hospital is staffed to meet the health care needs of
19 patients.

20 (2) Be based on the size of the hospital and a
21 measurement of hospital unit activity that quantifies the
22 rate of admissions, discharges and transfers for each
23 hospital unit and the time required for a direct care
24 registered nurse belonging to a hospital unit to complete
25 admissions, discharges and transfers for that hospital unit.

26 (3) Be based on total diagnoses for each hospital unit
27 and the nursing staff required to manage the set of diagnoses
28 and the unit's general and predominant patient population as
29 defined by the Medicare severity diagnosis-related groups
30 adopted by the Centers for Medicare and Medicaid Services, or

1 by other measures for patients who are not classified in the
2 Medicare severity diagnosis-related groups.

3 (4) Be consistent with any nationally recognized
4 evidence-based standards and guidelines established by
5 professional nursing specialty organizations and
6 credentialing bodies.

7 (5) Recognize differences in patient acuity.

8 (6) Recognize the availability of ancillary staff
9 support on the unit.

10 (7) Provide for additional registered nursing staff in
11 excess of the prescribed staffing ratios in section 802-C
12 when necessary, based on patient acuity and nursing care
13 requirements.

14 (8) Establish a minimum number of additional direct care
15 staff, unit clerks and charge nurses required on specified
16 shifts, provided that at least one direct care registered
17 nurse and one other nonregistered nurse direct care staff is
18 on duty in a unit when a patient is present. Additional
19 direct care staff requirements shall be based on the direct
20 care staff needs of individual patients, and patient nursing
21 care requirements and shall provide for shift-by-shift
22 staffing for each unit.

23 (9) Not base nursing staff requirements solely on
24 external benchmarking data.

25 (10) Comply with section 802-C.

26 Section 805-C. Staffing transparency.

27 (a) Duty of hospital.--A hospital shall maintain and post,
28 in a physical location in each unit and a publicly accessible
29 Internet website:

30 (1) A list of on-call nursing staff or staffing agencies

1 to provide replacement nursing staff in the event of a
2 vacancy. The list of on-call nursing staff or staffing
3 agencies shall be sufficient to provide for replacement
4 nursing staff.

5 (2) Staffing requirements, as determined by the staffing
6 plan for each unit, on a day-to-day, shift-by-shift basis.

7 (3) The actual staff and staff mix provided for each
8 unit, on a day-to-day, shift-by-shift basis.

9 (4) The variance between required and actual staffing
10 patterns, on a day-to-day, shift-by-shift basis.

11 (b) When notice of changes required.--If any of the direct
12 care staff who work at a hospital are represented under a
13 collective bargaining agreement, the hospital may not change the
14 direct care staff's wages, hours or other terms and conditions
15 of employment under the staffing plan unless the hospital first
16 provides notice to and, upon request, bargains with the direct
17 care staff in the bargaining unit and their exclusive
18 representative.

19 (c) Relationship of staffing plan to collective bargaining
20 agreement.--A staffing plan does not create, preempt or modify a
21 collective bargaining agreement or require a union or hospital
22 to bargain over the staffing plan while a collective bargaining
23 agreement is in effect.

24 (d) Submission of staffing plan to department.--A hospital
25 shall submit to the department a staffing plan adopted in
26 accordance with this section and submit any change to the plan
27 no later than 30 days after approval of the changes by the
28 hospital nurse staffing committee.

29 Section 806-C. Review of staffing plan.

30 (a) Duty of hospital nurse staffing committee.--A hospital

1 nurse staffing committee established in section 803-C shall
2 review the written hospital-wide staffing plan:

3 (1) At least once every year.

4 (2) At any other date and time specified by either
5 cochair of the committee.

6 (b) Matters to be reviewed.--In reviewing a staffing plan, a
7 hospital nurse staffing committee shall consider:

8 (1) Patient outcomes, including nursing quality
9 indicators.

10 (2) Complaints regarding staffing and reports of safe
11 harbor, including complaints about a delay in direct care
12 nursing or an absence of direct care nursing.

13 (3) The number of hours of nursing care provided through
14 a hospital unit compared with the number of patients served
15 by the hospital unit during a 24-hour period.

16 (4) The aggregate hours of mandatory overtime worked by
17 the nursing staff.

18 (5) The aggregate hours of voluntary overtime worked by
19 the nursing staff.

20 (6) The percentage of shifts for each hospital unit for
21 which staffing differed from what is required by the staffing
22 plan.

23 (7) Any other matter determined by the committee to be
24 necessary to ensure that the hospital is staffed to meet the
25 health care needs of patients.

26 (c) Outcome of review.--Upon conclusion of its review of a
27 staffing plan, a hospital nurse staffing committee shall:

28 (1) Report whether the staffing plan ensures that the
29 hospital is staffed to meet the health care needs of
30 patients.

1 (2) Modify the staffing plan as necessary to ensure that
2 the hospital is staffed to meet the health care needs of
3 patients.

4 Section 807-C. Safe harbor provisions.

5 (a) Duty of department.--The department shall develop a form
6 to be used by direct care registered nurses invoking safe
7 harbor. The form shall include the following information:

8 (1) The name and signature of the direct care registered
9 nurse making the request.

10 (2) The date and time of the request.

11 (3) The location where the conduct or assignment that is
12 the subject of the request occurred.

13 (4) The name of the individual who requested the direct
14 care registered nurse to engage in the conduct or made the
15 assignment that is the subject of the request.

16 (5) The name of the supervisor recording the request, if
17 applicable.

18 (6) An explanation of why the direct care registered
19 nurse is requesting safe harbor.

20 (7) A description of the collaboration between the
21 direct care registered nurse and the supervisor, if
22 applicable.

23 (b) Time period for suspension of form.--The direct care
24 registered nurse invoking safe harbor must submit the form
25 within 24 hours of the incident cited.

26 (c) Duty of facility to retain copy of form.--The facility
27 of the direct care registered nurse invoking safe harbor must
28 retain a copy of the request for safe harbor.

29 (d) Prohibited conduct.--A hospital may not discharge from
30 duty or otherwise retaliate against an employee for invoking

1 safe harbor or filing a complaint for violations of this
2 chapter.

3 Section 808-C. Enforcement.

4 (a) Duties of department.--The department shall:

5 (1) Establish a method by which a complaint may be filed
6 along with supporting documentation through the department's
7 publicly accessible Internet website regarding a violation
8 listed in section 807-C.

9 (2) No later than 30 days after receiving a complaint of
10 a violation listed in section 807-C, open an investigation of
11 the hospital and provide a notice of the investigation to the
12 complainant, the hospital and the cochairs of the nurse
13 staffing committee established under section 803-C, and to
14 the exclusive representative, if any, of the employee filing
15 the complaint. The notice shall include a summary of the
16 complaint but not the complainant's name or the specific
17 date, shift or unit, and the calendar week in which the
18 complaint arose.

19 (3) Conclude the investigation no later than 60 days
20 after opening the investigation. The department shall provide
21 a written report on the complaint to the cochairs of the
22 hospital staffing committee and the exclusive representative
23 if any, of the complainant. The report:

24 (i) Shall include a summary of the complaint.

25 (ii) Shall include the nature of the alleged
26 violation or violations.

27 (iii) Shall include the department's findings and
28 factual bases for the findings.

29 (iv) Shall include other information the department
30 determines is appropriate to include in the report.

1 (v) May not include the name of any complainant who
2 is a patient or the name of any individual that the
3 department interviewed in investigating the complaint.

4 (vi) Shall, if the department imposes one or more
5 civil penalties, include a notice of the civil penalties
6 that complies with this chapter.

7 (4) In conducting an investigation, make on-site
8 inspections of the unit, conduct interviews, compel the
9 production of documents and records pertaining to the
10 complaint and take any other steps deemed necessary to
11 investigate the complaint.

12 (b) Time period for filing complaints.--A complaint must be
13 filed no later than 60 days after the date of the violation
14 alleged in the complaint. The department may not investigate a
15 complaint or take enforcement action with respect to a complaint
16 that has not been filed in accordance with this chapter.

17 Section 809-C. Violations and right to issue penalties.

18 (a) Duty of department.--The department shall impose civil
19 penalties or suspend or revoke a license of a hospital for a
20 violation of any provision of this chapter. The department shall
21 adopt by rule a schedule establishing the amount of civil
22 penalty that may be imposed for a violation as described in this
23 section when there is a reasonable belief that safe patient care
24 has been or may be negatively impacted, except that a civil
25 penalty may not exceed \$15,000 per violation.

26 (b) Separate violations.--Each violation of a written
27 hospital-wide staffing plan shall be considered a separate
28 violation, and there is no cap on the times that a penalty may
29 be imposed for a repeat of a violation.

30 (c) Evidence that may be considered.--In determining whether

1 to impose a civil penalty, the department shall consider all
2 relevant evidence, including, but not limited to, witness
3 testimony, written documents and the observations of the
4 investigator.

5 (d) Penalties.--Following the receipt of a complaint and
6 completion of an investigation described in section 808-C for a
7 violation described in subsection (b), the department shall:

8 (1) Issue a warning for the first violation.

9 (2) Impose a civil penalty of \$7,500 for a second
10 violation of the same provision.

11 (3) Impose a civil penalty of \$15,000 for each third and
12 subsequent violation of the same provision.

13 (e) Other penalties.--

14 (1) The department shall take the actions described in
15 subsection (a) for any violation of this chapter, including,
16 but not limited to, the following:

17 (i) Failure to establish a nurse staffing committee.

18 (ii) Failure to adopt a staffing plan in a timely
19 manner.

20 (iii) Failure to comply with the staffing level in
21 the staffing plan, including the nurse-to-patient
22 staffing ratios prescribed in section 802-C, if
23 applicable.

24 (2) If a direct care registered nurse at a hospital is
25 unable to attend a staffing committee meeting because the
26 direct care registered nurse was not released from other
27 hospital duties to attend the committee, in violation of
28 section 803-C, the department shall:

29 (i) Issue a warning for the first violation.

30 (ii) Impose a civil penalty of up to \$1,500 for a

1 second and each subsequent violation.

2 (iii) Maintain for public inspection records of any
3 civil penalties or license suspensions or revocations
4 imposed on hospitals penalized under this chapter.

5 Section 810-C. Public posting.

6 The department shall post on a publicly accessible Internet
7 website maintained by the department:

8 (1) The hospital staffing plans received by the
9 department.

10 (2) Any report, described in section 806-C, made
11 pursuant to an investigation of a complaint for which the
12 department issued a warning or imposed a civil penalty under
13 sections 807-C and 808-C.

14 (3) Any order requiring a hospital to remedy a violation
15 as described in section 808-C.

16 (4) Any order imposing a civil penalty against a
17 hospital or suspending or revoking the license of a hospital
18 pursuant to the violations as described in section 808-C.

19 Section 811-C. Emergency declarations.

20 (a) Duty of hospital nurse staffing committee.--Upon the
21 occurrence of an emergency declaration either cochair of the
22 hospital nurse staffing committee may require the hospital nurse
23 staffing committee to meet to review and potentially modify the
24 staffing plan in response to the emergency declaration or
25 circumstances.

26 (b) Duties of hospital.--

27 (1) If an emergency causes a significant and atypical
28 change in the number of patients on a unit, the hospital
29 shall demonstrate that immediate and diligent efforts were
30 made to maintain required staffing levels.

1 (2) No later than 30 days after a hospital deviates from
2 a written hospital-wide staffing plan under section 804-C,
3 the hospital incident command shall report an assessment of
4 the nurse staffing needs arising from the emergency
5 declaration to the cochairs of the hospital nurse staffing
6 committee established under section 803-C.

7 (c) Limitations.--

8 (1) The hospital's deviation from the written hospital-
9 wide staffing plan under subsection (b) may not be in effect
10 for more than 90 days without the approval of the hospital
11 nurse staffing committee.

12 (2) Any contingency staffing plans or modified staffing
13 plans will terminate when the Federal Government or the head
14 of a State, local, county or municipal government ends the
15 emergency declaration.

16 (d) Definitions.--As used in this section, the following
17 words and phrases shall have the meanings given to them in this
18 subsection unless the context clearly indicates otherwise:

19 "Emergency." An event declared an emergency by the Federal
20 Government or the head of a State, local, county or municipal
21 government.

22 Section 812-C. Implementation.

23 The department may adopt regulations necessary to carry out
24 this chapter.

25 Section 2. This act shall take effect in six months.