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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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HOUSE BILL

No. 106 Session of  
2021

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

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REFERRED TO COMMITTEE ON HEALTH, FEBRUARY 24, 2021

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AN ACT

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

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

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

16 CHAPTER 8-A

17 HOSPITAL PATIENT PROTECTION

18 Section 831-A. Scope of chapter.

19 This chapter provides for hospital patient protection.

20 Section 832-A. Purpose.

1 The General Assembly finds that:

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

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

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

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

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

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

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

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

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

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

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

14 Section 833-A. Definitions.

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

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

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

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

30 "Clinical supervision." The assignment and direction of

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 others.

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

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

7 (i) Unit staffing.

8 (ii) Patient assignments.

9 (iii) Case mix analysis.

10 (iv) Budget planning and defense.

11 (v) Per patient cost of nursing services.

12 (vi) Variable billing.

13 (vii) Maintenance of quality assurance standards.

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

19 (i) The severity of patient illness.

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

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

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

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

29 (vi) The need for advocacy intervention.

30 (vii) The licensure of the personnel required for

1 care.

2 (viii) The patient care delivery model.

3 (ix) The unit's geographic layout.

4 (x) Generally accepted standards of nursing

5 practice, as established by the American Nurses

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

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

8 unique nature of the acute care hospital's patient

9 population.

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

11 additional number of direct care registered nurses and

12 other licensed and unlicensed nursing staff mix the

13 hospital must assign, based on the independent

14 professional judgment of the direct care registered

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

16 "Professional judgment." The educated, informed and

17 experienced process that a direct care registered nurse

18 exercises in forming an opinion and reaching a clinical

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

20 data, information and scientific evidence.

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

22 provision of those rehabilitation services that restore an ill

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

24 gainful employment of which the patient is capable in the

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

26 intellectual and emotional or psychological capabilities and in

27 accordance with planned goals and objectives.

28 "Safe harbor." A process that:

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

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



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

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

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

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

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

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

16 (2) Provides at least the following:

17 (i) Medical.

18 (ii) Nursing.

19 (iii) Dietary.

20 (iv) Pharmaceutical services.

21 (v) An activity program.

22 "Specialty care unit." A unit that:

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

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

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

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

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

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

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

26 "Telemetry unit." A unit that:

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

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

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

9 Section 834-A. Hospital nursing practice standard.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1           (3).

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

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

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

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

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

1 the request;

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

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

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

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

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

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

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

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

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

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

26 The following shall apply:

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

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

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

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

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

11 Section 836-A. Free speech.

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

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

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

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

30 (c) Protected speech.--

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

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

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

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

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



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

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

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

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

20 (1) required by law;

21 (2) compelled by proper legal process;

22 (3) consented to by the patient; or

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

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

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

5 Section 837-A. Protected rights.

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

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

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

13 (b) Right to file complaint.--

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23 (c) Additional conditions.--

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

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



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

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

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

16 Section 841-A. Hospital unit staffing plans.

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

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

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

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

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

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

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

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

24 (3) The plan shall include the following:

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

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

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

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

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

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

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

23           (e) Review committee membership.--

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

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

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

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

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

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

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

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

20 (j) Temporary nursing agencies.--

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

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

1 staff employed directly by the hospital.

2 (k) Planning for routine fluctuations.--

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

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

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

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

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

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

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

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

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

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

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

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

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

7 (i) Assessment.

8 (ii) Nursing diagnosis.

9 (iii) Planning.

10 (iv) Intervention.

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

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

15 (c) Transparency of system.--

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

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

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

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

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

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

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

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

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

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

28 Section 843-A. Prohibited activities.

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

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

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

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

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

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

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

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

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

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

27 Section 844-A. Fines and civil penalties.

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

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



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

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

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

18 Section 845-A. Private right of action.

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

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

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

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

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

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

13 Section 846-A. Enforcement procedure.

14 (a) Period of limitations.--

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

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

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

30 "RIGHTS OF REGISTERED NURSES AS PATIENT ADVOCATES, EMPLOYEES

1 AND PATIENTS."

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