

**HOUSE . . . . . No. 1008**

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The Commonwealth of Massachusetts

PRESENTED BY:

*Christine E. Canavan*

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To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act relative to patient safety.

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PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Christine E. Canavan</i>	<i>10th Plymouth</i>
<i>William C. Galvin</i>	<i>6th Norfolk</i>
<i>Martin J. Walsh</i>	<i>13th Suffolk</i>
<i>Nick Collins</i>	<i>4th Suffolk</i>
<i>Edward F. Coppinger</i>	<i>10th Suffolk</i>
<i>Sean Garballey</i>	<i>23rd Middlesex</i>
<i>Josh S. Cutler</i>	<i>6th Plymouth</i>
<i>Mary S. Keefe</i>	<i>15th Worcester</i>
<i>Denise Provost</i>	<i>27th Middlesex</i>
<i>Daniel A. Wolf</i>	<i>Cape and Islands</i>
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>
<i>Paul W. Mark</i>	<i>2nd Berkshire</i>
<i>Paul McMurtry</i>	<i>11th Norfolk</i>
<i>David M. Rogers</i>	<i>24th Middlesex</i>
<i>Rhonda Nyman</i>	<i>5th Plymouth</i>
<i>Aaron Vega</i>	<i>5th Hampden</i>
<i>Frank I. Smizik</i>	<i>15th Norfolk</i>
<i>James E. Timilty</i>	<i>Bristol and Norfolk</i>

<i>Michael D. Brady</i>	<i>9th Plymouth</i>
<i>Angelo J. Puppolo, Jr.</i>	<i>12th Hampden</i>
<i>Cleon H. Turner</i>	<i>1st Barnstable</i>
<i>Jonathan D. Zlotnik</i>	<i>2nd Worcester</i>
<i>Denise C. Garlick</i>	<i>13th Norfolk</i>
<i>Claire D. Cronin</i>	<i>11th Plymouth</i>
<i>Ellen Story</i>	<i>3rd Hampshire</i>
<i>Louis L. Kafka</i>	<i>8th Norfolk</i>
<i>Sarah K. Peake</i>	<i>4th Barnstable</i>
<i>Denise Andrews</i>	<i>2nd Franklin</i>
<i>Benjamin Swan</i>	<i>11th Hampden</i>
<i>John H. Rogers</i>	<i>12th Norfolk</i>
<i>Dennis A. Rosa</i>	<i>4th Worcester</i>
<i>Kimberly N. Ferguson</i>	<i>1st Worcester</i>
<i>Timothy J. Toomey, Jr.</i>	<i>26th Middlesex</i>
<i>Tackey Chan</i>	<i>2nd Norfolk</i>
<i>James J. O'Day</i>	<i>14th Worcester</i>
<i>Stephen L. DiNatale</i>	<i>3rd Worcester</i>
<i>Anne M. Gobi</i>	<i>5th Worcester</i>
<i>Ruth B. Balsler</i>	<i>12th Middlesex</i>
<i>James M. Cantwell</i>	<i>4th Plymouth</i>
<i>Robert M. Koczera</i>	<i>11th Bristol</i>
<i>David Paul Linsky</i>	<i>5th Middlesex</i>
<i>Tom Sannicandro</i>	<i>7th Middlesex</i>
<i>Carl M. Sciortino, Jr.</i>	<i>34th Middlesex</i>
<i>James J. Dwyer</i>	<i>30th Middlesex</i>
<i>Cheryl A. Coakley-Rivera</i>	<i>10th Hampden</i>
<i>Richard J. Ross</i>	<i>Norfolk, Bristol and Middlesex</i>
<i>Michael J. Finn</i>	<i>6th Hampden</i>
<i>Geoff Diehl</i>	<i>7th Plymouth</i>
<i>Timothy R. Madden</i>	<i>Barnstable, Dukes and Nantucket</i>
<i>John J. Mahoney</i>	<i>13th Worcester</i>
<i>John J. Lawn, Jr.</i>	<i>10th Middlesex</i>
<i>John W. Scibak</i>	<i>2nd Hampshire</i>
<i>Katherine M. Clark</i>	<i>Fifth Middlesex</i>
<i>Kevin G. Honan</i>	<i>17th Suffolk</i>
<i>Diana DiZoglio</i>	<i>14th Essex</i>
<i>John J. Binienda</i>	<i>17th Worcester</i>
<i>Marcos A. Devers</i>	<i>16th Essex</i>

<i>Patricia D. Jehlen</i>	<i>Second Middlesex</i>
<i>Mark C. Montigny</i>	<i>Second Bristol and Plymouth</i>
<i>Mark J. Cusack</i>	<i>5th Norfolk</i>
<i>Brian M. Ashe</i>	<i>2nd Hampden</i>
<i>Jennifer E. Benson</i>	<i>37th Middlesex</i>
<i>Antonio F. D. Cabral</i>	<i>13th Bristol</i>
<i>John P. Fresolo</i>	<i>16th Worcester</i>
<i>Steven M. Walsh</i>	<i>11th Essex</i>

**HOUSE . . . . . No. 1008**

By Ms. Canavan of Brockton, a petition (accompanied by bill, House, No. 1008) of Christine E. Canavan and others relative to the annual reporting of patient safety by health care providers. Health Care Financing.

The Commonwealth of Massachusetts

In the Year Two Thousand Thirteen

An Act relative to patient safety.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1 SECTION 1. section 20 of Chapter 12C of the General laws, as amended by Chapter 224  
2 of the Acts of 2012, is

3 hereby amended by inserting the following new sections:-

4 (e). The center shall require hospitals, nursing homes, chronic care and rehabilitation  
5 hospitals, other specialty hospitals, clinics, including mental health clinics, all other  
6 health care institutions, organizations and corporations licensed or registered by the  
7 department of public health and health maintenance organizations as defined in chapter  
8 176G to annually report appropriate data to the center. This data will be posted and made  
9 available to the general public on the website and include but not be limited to:

10 i. measures which differentiate between severity of patient illness, readmission rates,  
11 length of stay, patient/family satisfaction with care, nurse satisfaction and nurse vacancy  
12 rates;

13 ii. indicators of the nature and amount of nursing care directly provided by licensed  
14 nurses including, but not limited to, the actual and the average ratio of registered nurses  
15 to

16 patients or residents and the actual and the average skill mix ratio of licensed and  
17 supervised

18 unlicensed personnel to patients or residents, and statistics as defined by the National  
19 Quality Forum (NQF) and/or the Center for Medicare and Medicaid Services (CMS) on the  
20 number of falls, number of incidents of failure to rescue, number of health care acquired  
21 infections, including sepsis and pneumonia, and number of medication errors.

22 iii. documentation of defined nursing interventions such as clinical assessment by a  
23 licensed provider, pain measurement and management, skin integrity  
24 management, patient education and discharge planning; and

25 iv. documentation of patient safety measures such as restraint checks, seizure  
26 precautions and suicidal precautions, to enable purchasers of group health  
27 insurance policies and health care services and for the public at large to make  
28 meaningful financial and quality of care comparisons.

29 (f). The center shall consult with interested parties, including but not limited to; the group  
30 insurance commission, the Massachusetts nurses association, the Massachusetts health  
31 data consortium, the Massachusetts hospital association, the public health council,  
32 Massachusetts senior action council, associated industries of Massachusetts, the  
33 Massachusetts AFL-CIO, the division of medical assistance, the board of registration in nursing,  
34 the

35 division of insurance, the Massachusetts association of health maintenance  
36 organizations, and a national council of quality assurance accreditation expert to  
37 develop methodologies for collecting and reporting data pursuant to this section and to  
38 plan for its use and dissemination to culturally diverse populations.

39 (g). Subject to the provisions of section 2(c) of chapter 66A, information collected by the  
40 center pursuant to this section shall be made available annually in the form of printed  
41 reports and through electronic medium derived from raw data and/or through  
42 computer-to-computer access. All personal data shall be maintained with the physical

43 safeguards enumerated in said chapter.

44 SECTION 2. Section 70E of Chapter 111 of the General Laws, as appearing in the 2010  
45 Official Edition, is hereby amended by striking out in line 89 the word “and”.

46 SECTION 3. Said section 70E of said Chapter 111, as so appearing, is hereby further  
47 amended by striking out in line 99 the word “foregoing.” and adding, the following words  
48 “foregoing; and”.

49 SECTION 4. Said section 70E of said Chapter 111, as so appearing, is hereby further  
50 amended by adding at the end thereof the following new subsection:—

51 (o) upon request, to receive from a duly authorized representative of the facility,  
52 disclosure of

53 nursing sensitive outcome data as defined by NQF and/or CMS for statistics including  
54 but not limited to, the actual and the average ratio of registered nurses to patients or residents and  
55 the actual and the average skill mix ratio of licensed and supervised unlicensed personnel to  
56 patients or residents, the number of falls, the number of incidents of failure to rescue, the number  
57 of health care acquired infections, including sepsis and pneumonia, and the number of  
58 medication errors, and further, upon request, to receive from said duly authorized representative  
59 information regarding the educational preparation and length of employment of said facility’s  
60 nursing staff, as well as information on nurse satisfaction and nurse vacancy rates, and to receive  
61 a copy of the comparative nursing care data report as outlined in chapter 118G, section 24  
62 subsection (a). The fee for said report shall be determined by the rate of reasonable copying  
63 expenses.

64 SECTION 5. Chapter 111 of the General Laws, as amended by Chapter 224 of the Acts  
65 of 2012, is hereby amended by adding the following 9 sections:—

66 Section 229. As used in sections 229 to 237, inclusive, the following words shall, unless  
67 the context clearly requires otherwise, have the following meanings:—

68 “Adjustment of standards”, the adjustment of nurse’s patient assignment standards in  
69 accordance with patient acuity according to, or in addition to, direct-care registered nurse  
70 staffing levels determined by the nurse manager, or his designee, using the patient acuity system  
71 developed by the department and any alternative patient acuity system utilized by hospitals, if  
72 said system is certified by the department.

73 “Acuity”, the intensity of nursing care required to meet the needs of a patient; higher  
74 acuity usually requires longer and more frequent nurse visits and more supplies and equipment.

75 “Assignment”, the provision of care to a particular patient for which a direct-care  
76 registered nurse has responsibility within the scope of the nurse’s practice, notwithstanding any  
77 general or special law to the contrary.

78 “Assist”, patient care that a direct-care registered nurse may provide beyond his patient  
79 assignments if the tasks performed are specific and time-limited.

80 “Board”, the board of registration in nursing.

81 “Circulator”, a direct-care registered nurse devoted to tracking key activities in the  
82 operating room.

83 “Department”, the department of public health.

84 “Direct-care registered nurse”, a registered nurse who has accepted direct responsibility  
85 and

86 accountability to carry out medical regimens, nursing or other bedside care for patients.

87 “Facility”, a hospital licensed under section 51, the teaching hospital of the University of  
88 Massachusetts medical school, any licensed private or state-owned and state-operated general  
89 acute care hospital, an acute psychiatric hospital, an acute care specialty hospital, or any acute  
90 care unit within a state-operated facility. As used in sections 221 to 229, inclusive, this definition  
91 shall not include rehabilitation facilities or long-term acute care facilities.

92 “Float nurse”, a direct-care registered nurse that has demonstrated competence in any  
93 clinical area that he may be requested to work and is not assigned to a particular unit in a facility.

94 “Health Care Workforce”, personnel that have an effect upon the delivery of quality care  
95 to patients, including but not limited to, licensed practical nurses, unlicensed assistive personnel  
96 and/or other service, maintenance, clerical, professional and/or technical workers and other  
97 health care workers.

98 “Nurse’s patient limit”, the maximum number of patients assigned to each direct-care  
99 registered nurse at one time on a particular unit.

100 “Monitor in moderate sedation cases”, a direct-care registered nurse devoted to  
101 continuously monitoring his patient’s vital statistics and other critical symptoms.

102 “Nurse manager”, the registered nurse, or his designee, whose tasks include, but are not  
103 limited to, assigning registered nurses to specific patients by evaluating the level of experience,  
104 training, and education of the direct-care nurse and the specific acuity levels of the patient.

105 “Nurse’s patient assignment standard”, the optimal number of patients to be assigned to  
106 each direct-care registered nurse at one time on a particular unit.

107 “Nursing care”, care which falls within the scope of practice as defined in section 80B of  
108 chapter 112 or is otherwise encompassed within recognized professional standards of nursing  
109 practice, including assessment, nursing diagnosis, planning, intervention, evaluation and patient  
110 advocacy.

111 “Overwhelming patient influx”, an unpredictable or unavoidable occurrence at  
112 unscheduled or

113 unpredictable intervals that causes a substantial increase in the number of patients  
114 requiring emergent and immediate medical interventions and care, a declared national or state  
115 emergency, or the activation of the health care facility disaster diversion plan to protect the  
116 public health or safety.

117 “Patient acuity system”, a measurement system that is based on scientific data and  
118 compares the registered nurse staffing level in each nursing department or unit against actual  
119 patient nursing care requirements of each patient, taking into consideration the health care  
120 workforce on duty and available for work appropriate to their level of training or education, in  
121 order to predict registered nursing direct-care requirements for individual patients based on the  
122 severity of patient illness. Said system shall be both practical and effective in terms of hospital  
123 implementation.

124 “Teaching hospital”, a facility as defined in section 51 that meets the teaching facility  
125 definition of the American Association of Medical Colleges.

126 “Temporary nursing service agencies”, also known as the nursing pool as defined in  
127 section 72Y, and as regulated by the department.

128 “Unassigned registered nurse”, includes, but not limited to, any nurse administrator,  
129 nurse supervisor, nurse manager, or charge nurse that maintains his registered nurse licensing  
130 certification but is not assigned to a patient for direct care duties.

131 Section 230. The department shall reevaluate the numbers that comprise the nurse’s  
132 patient assignment standards and nurse’s patient limits and the patient acuity system in the  
133 evaluation period and then every 3 years thereafter, taking into consideration evolving  
134 technology or changing treatment protocols and care practices and other relevant clinical factors.

135 Section 231. (a) The department shall develop nurse’s patient assignment standards  
136 which shall be an ideal number of patients assigned to a direct-care registered nurse that will  
137 promote equal, high-quality, and safe patient care at all facilities. The standards shall form the  
138 basis of nurse staffing plans set forth in section 233. The department shall use, at a minimum, the  
139 following information to develop nurse’s patient assignment standards for all facilities: (1)  
140 Massachusetts specific data, including, but not limited to, the role of registered nurses in the



141 commonwealth by type of unit, the current staffing plans of facilities, the relative experience and  
142 education of registered nurses, the variability of facilities, and the needs of the

143 patient population; (2) fluctuating patient acuity levels; (3) variations among facilities  
144 and patient care units; (4) scientific data related to patient outcomes, a rigorous analysis of  
145 clinical data related to patient outcomes and valid nationally recognized scientific evidence on  
146 patient care, facility medical error rates, and health care quality measures; (5) availability of  
147 technology; (6) treatment modalities within behavioral health facilities; and (7) public testimony  
148 from both the public and experts within the field.

149 (b) The nurse's patient assignment standards may be adjustable and flexible, as  
150 determined by the department, to consider factors, including but not limited to; varying patient  
151 acuity, time of day, and registered nurse experience. The number of patients assigned to each  
152 direct-care registered nurse may not be averaged. The nurse's patient assignment standards may  
153 not refer to a total number of patients and a total number of direct-care registered nurses on a unit  
154 and shall not be factored over a period of time.

155 (c) The department shall develop nurse's patient limits which represent the maximum  
156 number of patients to be safely assigned to each direct-care registered nurse at one time on a  
157 particular unit. The number of patients assigned to each direct-care registered nurse shall not be  
158 averaged and each limit shall pertain to only one direct-care registered nurse. Nurse's patient  
159 limits shall not refer to a total number of patients and a total number of direct-care registered  
160 nurses on a unit and shall not be factored over a period of time. A facility's failure to adhere to  
161 these nurse's patient limits shall result in non-compliance with this section and the facility shall  
162 be subject to the enforcement procedures herein and section 236.

163 (d) If the commissioner finds that, for any unit, the department cannot arrive at a  
164 rationally based limit using available scientific data, the commissioner shall report to: (1) the  
165 clerks of the house of representatives and the senate who shall forward the same to the speaker of  
166 the house of representatives, the president of the senate , the chairs of the joint committee on  
167 public health, and the joint committee on state administration and regulatory oversight; (2) the  
168 commissioner of the division of health care financing and policy; and (3) the nursing advisory  
169 board as defined in section 16H of chapter 6A, the reasons for the department's failure to arrive  
170 at a rationally based limit and the data necessary for the department to determine a limit by the  
171 next review period.

172 (e) The setting of nurse's patient assignment standards and nurse's patient limits for  
173 registered nurses shall not result in the understaffing or reductions in staffing levels of the health  
174 care workforce. The availability of the health care workforce enables registered nurses to focus  
175 on the nursing care functions that only registered nurses, by law, are permitted to perform and  
176 thereby helps to ensure adequate staffing levels.

177 (f) Nurse's patient assignment standards and nurse's patient limits shall be determined for  
178 the following departments, units or types of nursing care:— intensive care units, (a) critical  
179 patient(s) (b) critical unstable patient(s); critical care units, (a) critical patient(s) (b) critical  
180 unstable patient(s); neo-natal intensive care (a) critical patient(s) (b) critical unstable patient(s);  
181 burn units (a) critical patient(s) (b) critical unstable patient(s); step-down/intermediate care;  
182 operating rooms, (a) not to include a registered nurse working as a circulator (b) to be  
183 determined for registered nurse working as a monitor in moderate sedation cases; post anesthesia  
184 care with the patient remaining under anesthesia; post-anesthesia care with

185 the patient in a post-anesthesia state; emergency department overall; emergency critical  
186 care, provided that the triage, radio or other specialty registered nurse is not included; emergency  
187 trauma; labor and delivery with separate standards for (i) a patient in active labor, (ii) patients, or  
188 couplets, in immediate postpartum, and (iii) patients, or couplets, in postpartum; intermediate  
189 care nurseries; well-baby nurseries; pediatric units; psychiatric units; medical and surgical;  
190 telemetry; observational/out-patient treatment; transitional care; acute inpatient rehabilitation;  
191 specialty care unit; and any other units or types of care determined necessary by the department.

192 (g) The department shall jointly, with the department of mental health, develop nurse's  
193 patient assignment standards and nurse's patient limits in acute psychiatric care units. These  
194 standards and limits shall not interfere with the licensing standards of the department of mental  
195 health.

196 (h) Nothing in this section shall exempt a facility that identifies a unit by a name or term  
197 other than those used in this section, from complying with the nurse's patient assignment  
198 standards and nurse's patient limits and other provisions established in this section for care  
199 specific to the types of units listed.

200 Section 232. (a) The department shall develop a patient acuity system, as defined in  
201 section 229. The department may also certify patient acuity systems developed or utilized by  
202 facilities. Patient acuity systems shall include standardized criteria determined by the  
203 department. The patient acuity system shall be used by facilities to: (1) assess the acuity of  
204 individual patients and assign a value, within a numerical scale, to each individual patient; (2)  
205 establish a methodology for aggregating patient acuity; (3) monitor and address the fluctuating  
206 level of acuity of each patient; (4) supplement the nurse's patient assignments and indicate the  
207 need for adjustment of direct-care registered nurse staffing as patient acuity changes; and (5)  
208 assess the need for health care workforce staff to ensure nurses' focus on the delivery of patient  
209 care.

210 (b) The patient acuity system designed by the department or other patient acuity system  
211 used by a facility and certified by the department shall be used in determining adjustments in the  
212 number of direct-care registered nurses due to the following factors: (1) the need for specialized  
213 equipment and technology; (2) the intensity of nursing interventions required and the complexity

214 of clinical nursing judgment needed to design, implement and evaluate the patient's nursing care  
215 plan consistent with professional standards of care; (3) the amount of nursing care needed, both  
216 in number of direct-care registered nurses and skill mix of members of the health care workforce  
217 necessary to the delivery of quality patient care required on a daily basis for each patient in a  
218 nursing department or unit, the proximity of patients, the proximity and availability of other  
219 resources, and facility design; (4) appropriate terms and language that are readily used and  
220 understood by direct-care registered nurses; and (5) patient care services provided by registered  
221 nurses and the health care workforce.

222 (c) The patient acuity system shall include a method by which facilities may adjust a  
223 nurse's patient assignments within the limits determined by the department as follows: (1) a  
224 nurse manager or designee shall adjust the patient assignments according to the patient acuity  
225 system whenever practicable as determined by need; (2) a nurse manager or designee shall adjust  
226 the patient assignments when the department-developed or certified patient acuity system  
227 indicates a change in acuity of any particular patient to the extent that it triggers an alert  
228 mechanism tied to the aggregate patient acuity; (3) a nurse manager or designee shall be  
229 responsible for reassigning patients to comply with the patient acuity system, provided that the  
230 nurse manager may rearrange patient assignments within the direct-care registered nurses already  
231 under management and may also utilize an available float nurse; (4) at any time,

232 any registered nurse may assess the accuracy of the patient acuity system as applied to a  
233 patient in the registered nurse's care. Nothing in this section shall supersede or replace any  
234 requirements otherwise mandated by law, regulation or collective bargaining contract so long as  
235 the facility meets the requirements determined by the department.

236 Section 233. As a condition of licensing by the department, each facility shall submit  
237 annually to the department a prospective staffing plan with a written certification that the staffing  
238 plan is sufficient to provide adequate and appropriate delivery of health care services to patients  
239 for the ensuing year. A staffing plan shall: (1) incorporate information regarding the number of  
240 licensed beds and amount of critical technical equipment associated with each bed in the entire  
241 facility; (2) adhere to the nurse's patient assignment standards; (3) employ the department -  
242 developed or facility-developed or any alternative patient acuity system developed or utilized by  
243 a facility and certified by the department when addressing fluctuations in patient acuity levels  
244 that may require adjustments in registered nurse staffing levels as determined by the department;  
245 (4) provide for orientation of registered nursing staff to assigned clinical practice areas, including  
246 temporary assignments; (5) include other unit or department activity such as discharges, transfers  
247 and admissions, and administrative and support tasks that are expected to be

248 done by direct-care registered nurses in addition to direct nursing care; (6) include written  
249 reports of the facility's patient aggregate outcome data; (7) incorporate the assessment criteria  
250 used to validate the acuity system relied upon in the plan; and (8) include services provided by  
251 the health care workforce necessary to the delivery of quality patient care. As a condition of

252 licensing, each facility shall submit annually to the department an audit of the preceding year's  
253 staffing plan. The audit shall compare the staffing plan with measurements of actual staffing, as  
254 well as measurements of actual acuity for all units within the facility assessed through the patient  
255 acuity system.

256           Section 234. (a) A direct-care registered nurse at the beginning of the nurse's shift will be  
257 assigned to a certain patient or patients by the nurse manager, who shall use professional  
258 judgment in so assigning, provided that the number of patients so assigned shall not exceed the  
259 nurse's patient limit associated with the unit.

260           (b) An unassigned registered nurse may be included in the counting of the nurse to  
261 patient assignment standards only when that unassigned registered nurse is providing direct care.  
262 When an unassigned registered nurse is engaged in activities other than direct patient care, that  
263 nurse shall not be included in the counting of the nurse to patient assignments. Only an  
264 unassigned registered nurse, who has demonstrated current competence to the facility to provide  
265 the level of care specific to the unit to which the patient is admitted, may relieve a direct-care  
266 registered nurse from said unit during breaks, meals, and other routine and expected absences.

267           (c) Nothing in this section shall prohibit a direct-care registered nurse from assisting with  
268 specific tasks within the scope of the nurse's practice for a patient assigned to another nurse.

269           (d) Each facility shall plan for routine fluctuations in patient census. In the event of an  
270 overwhelming patient influx, said facility shall demonstrate that prompt efforts were made to  
271 maintain required staffing levels during the influx and that mandated limits were reestablished as  
272 soon as possible, and no longer than a total of 48 hours after termination of the event, unless  
273 approved by the department.

274           Section 235. (a) No facility shall directly assign any unlicensed personnel to perform  
275 non-delegable licensed nurse functions to replace care delivered by a licensed registered nurse.  
276 Unlicensed personnel are prohibited from performing functions which require the clinical  
277 assessment, judgment and skill of a licensed registered nurse. Such functions shall include, but  
278 not be limited to: (1) nursing activities which require nursing assessment and judgment during  
279 implementation; (2) physical, psychological, and social assessment which requires nursing  
280 judgment, intervention, referral or follow-up; (3) formulation of the plan of nursing care and  
281 evaluation of the patient's response to the care provided; (4) administration of medications; and  
282 (5) health teaching and health counseling. (b) For purposes of compliance with this section, no  
283 registered nurse shall be assigned to a unit or a clinical area within a facility unless the registered  
284 nurse has an appropriate orientation in the clinical area sufficient to provide competent nursing  
285 care and has demonstrated current competency levels through

286           accredited institutions and other continuing education providers.

287 Section 236. (A) If a facility can reasonably demonstrate to the department, with  
288 sufficient documentation as determined by the appropriate entity, the attorney general or the  
289 division of health care finance and policy, extreme financial hardship as a consequence of  
290 meeting the requirements set forth in sections 229 to 237, inclusive, then the facility may apply  
291 to the department for a waiver of up to 9 months.

292 (B) As a condition of licensing, a facility required to have a staffing plan under this  
293 section shall make available daily on each unit the written nurse staffing plan to reflect the  
294 nurse's patient assignment standard and the nurse's patient limit as a means of consumer  
295 information and protection.

296 (C) The department shall enforce paragraphs (1) to (6), inclusive, as follows: (1) If the  
297 department determines that there is an apparent pattern of failure by a facility to maintain or  
298 adhere to nurse's patient limits in accordance with sections 229 to 236, inclusive, the facility  
299 may be subject to an inquiry by the department to determine the causes of the apparent pattern.  
300 If, after such inquiry, the department determines that an official investigation is appropriate and  
301 after issuance of written notification to the facility, the department may conduct an investigation.  
302 Upon completion of the investigation and a finding of noncompliance, the department shall give  
303 written notification to the facility as to the manner in which the facility failed to comply with  
304 sections 229 to 236, inclusive. Facilities shall be granted due process during the investigation,  
305 which shall include the following: (a) notice shall be granted to facilities that are

306 noncompliant with sections 229 to 236, inclusive; (b) facilities shall be afforded the  
307 opportunity to submit to the department, through written clarification, justifications for failure to  
308 comply with sections 229 to 236, inclusive, if so determined by said department, including, but  
309 not limited to, patient outcome data and other resources and personnel available to support the  
310 registered nurse and patients in the unit, provided however, that facilities shall bear the burden of  
311 proof for any and all justifications submitted to the department; (c) based upon such  
312 justifications, the department may determine any corrective measures to be taken, if any. Such  
313 measures may include: (i) an official notice of failure to comply; (ii) the imposition of additional  
314 reporting and monitoring requirements; (iii) revocation of said facility's license or registration;  
315 and (iv) the

316 closing of the particular unit that is noncompliant. (2) Failure to comply with limited  
317 nurse staffing requirements shall be evidence of noncompliance with this section. (3) Failure to  
318 comply with the provisions of this section is actionable. (4) If the department issues an official  
319 notice of

320 failure to comply, as set forth in paragraph (1) of subsection (C) and subclause (i) of  
321 clause (c) of said paragraph (1) following submission to and adjudication by the department of  
322 justifications for failure to comply submitted by a facility pursuant to clause (b) of paragraph (1)  
323 of said subsection (C) to a facility found in noncompliance with limits, the facility shall

324 prominently post its notice within each noncompliant unit. Copies of the notice shall be posted  
325 by the facility immediately upon receipt and maintained for 14 consecutive days in conspicuous  
326 places including all places where notices to employees are customarily posted. The department  
327 shall post the notices on its website immediately after a finding of noncompliance. The notice  
328 shall remain on the department's website for 14 consecutive days or until such noncompliance is  
329 rectified, whichever is longer. (5) If a facility is repeatedly found in noncompliance based on a  
330 pattern of failure to comply as determined by the department, the commissioner may fine the

331 facility not more than \$3,000 for each finding of noncompliance. (6) Any facility may  
332 appeal any measure or fine sought to be enforced by the department hereunder to the division of  
333 administrative law appeals and any such measure or fine shall not be enforced by the department  
334 until final adjudication by the division. (7) The department may promulgate rules and regulations  
335 necessary to enforce this section.

336 Section 237. The department of public health shall provide for (1) an accessible and  
337 confidential system to report any failure to comply with requirements of sections 229 to 236,  
338 inclusive, and (2) public access to information regarding reports of inspections, results,  
339 deficiencies and corrections under said sections 229 to 236, inclusive, unless such information is  
340 restricted by law or regulation. Any person who makes such a report shall identify themselves  
341 and substantiate the basis for the report; provided, however, that the identity of said person shall  
342 be kept confidential by the department.

343 SECTION 6. The department of public health shall include in its regulations pertaining to  
344 temporary nursing service agencies, or nursing pools, as defined in section 72Y of chapter 111 of  
345 the General Laws, and as regulated by the department, parameters in which the department shall  
346 deny registration and operation of said agencies only if the agency attempts to increase costs to  
347 facilities by at least 10 per cent.

348 SECTION 7. The department of public health shall submit 2 written reports on its  
349 progress in carrying out this act. Said department shall report to the general court the results of  
350 its 2 written reports to the clerks of the house of representatives and the senate who shall forward  
351 the same to the president of the senate, the speaker of the house of representatives, the chairs of  
352 the joint committee on public health. The first report shall be filed on or before March 1, 2014  
353 and the second report shall be filed on or before December 1, 2015.

354 SECTION 8. The department of public health shall initially evaluate the numbers that  
355 comprise the nurse's patient assignment standards and nurse's patient limits set forth in sections  
356 221 to 228, inclusive of chapter 111 of the General Laws on or before January 1, 2017.

357 SECTION 9. The department of public health, shall develop a comprehensive statewide  
358 plan to promote the nursing profession in collaboration with: the executive office of housing and  
359 economic development, the board of education, the board of higher education, the board of  
360 registration in nursing, the Massachusetts Nurses Association, 1199SEIU, the Massachusetts

361 Hospital Association, Inc., the Massachusetts Organization of Nurse Executives Inc., and any  
362 other entity deemed relevant by the department. The plan shall include specific recommendations  
363 to increase interest in the nursing profession and increase the supply of registered nurses in the  
364 workforce, including recommendations that may be carried out by state agencies. The plan shall  
365 be filed with the clerks of the house of representatives and the

366 senate, who shall forward the same to the president of the senate and the speaker of the  
367 house of representatives on or before April 15, 2014.

368 SECTION 10. Teaching hospitals, as defined in section 229 of chapter 111 of the General  
369 Laws, shall meet the applicable requirements of sections 229 to 237, inclusive of said chapter  
370 111 of the General Laws on or before October 1, 2014. All other facilities, as defined in section  
371 229 of chapter 111 of the General Laws, shall meet the applicable requirements of sections 229  
372 to 237, inclusive of said chapter 111 of the General Laws no later than October 1, 2014.

373 SECTION 12. Section 8 shall take effect on December 1, 2018.

374 SECTION 13. The department of public health shall, on or before January, 1, 2014,  
375 promulgate

376 regulations defining criteria and proscribing the process for establishing or certifying by  
377 the department a standardized patient acuity system, as defined in section 229 of chapter 111 of  
378 the General Laws, developed or utilized by a facility as defined in said section 229 of said  
379 chapter 111.

380 SECTION 14. The department of public health shall, on or before March 1, 2014,  
381 develop a standardized patient acuity system or certify a facility developed or utilized patient  
382 acuity systems, as defined in section 229 of chapter 111 of the General Laws, to be utilized by all  
383 facilities to monitor the number of direct-care registered nurses needed to meet patient acuity  
384 level.

385 SECTION 15. The department of public health shall, on or before June 1, 2014, establish,  
386 but not before the development or certification of standardized patient acuity systems, nurse's  
387 patient assignment standards and nurse's patient limits as defined in section 229 of chapter 111  
388 of the General Laws.

389 SECTION 16. The department of public health shall, on or before June 1, 2014,  
390 promulgate regulations to implement the requirements of section 237 of chapter 111 of the  
391 General Laws.