

SENATE No. 00539

The Commonwealth of Massachusetts

PRESENTED BY:

Richard T. Moore

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 to promote the nursing profession and promote safe patient care.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Richard T. Moore</i>	<i>Worcester and Norfolk</i>
<i>Ann-Margaret Ferrante</i>	<i>5th Essex</i>
<i>Karen E. Spilka</i>	<i>Second Middlesex and Norfolk</i>

SENATE No. 00539

By Mr. Moore, petition (accompanied by bill, Senate, No. 539) of Spilka, Ferrante and Moore for legislation to promote safe patient care and support the nursing profession [Joint Committee on Health Care Financing].

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE
□ SENATE
□ , NO. 876 OF 2009-2010.]

The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

An Act to promote the nursing profession and promote safe patient care.

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. Chapter 6A of the General Laws is hereby amended by inserting after
2 section 16G the following section:—

3 Section 16H. A nursing advisory board is hereby established within, but not subject to,
4 the control of the executive office of health and human services. The advisory board shall
5 consist of 8 members who shall have a demonstrated background in nursing or health services
6 research and who shall represent the continuum of health care settings and services, including,
7 but not limited to, long-term institutional care, acute care, community-based care, public health,
8 school care and higher education in nursing. The members shall be appointed by the governor
9 from a list of 10 individuals recommended by the board of registration in nursing and a list of 10

10 persons recommended by the Massachusetts Center for Nursing, Inc. The advisory board shall
11 elect a chair from among its members and adopt by-laws for its proceedings. Each of the 8
12 members appointed by the governor shall serve for a term of 3 years, except that in making his
13 initial appointments, the governor shall appoint 2 members to serve for terms of 1 year, 2
14 members to serve for terms of 2 years and 4 members to serve for terms of 3 years. Persons may
15 be appointed to fill vacancies who shall serve for the unexpired term. No member shall serve
16 more than 2 consecutive full terms.

17 The advisory board shall:

18 (a) advise the governor and the general court on matters related to the practice of
19 nursing, including the shortage of nurses across the commonwealth in all settings and services,
20 including long-term institutional care, acute care, community-based care, public health, school
21 care and higher education in nursing;

22 (b) develop a research agenda, apply for federal and private research grants, and
23 commission and fund research projects to fulfill the agenda;

24 (c) recommend policy initiatives to the governor and the general court;

25 (d) prepare an annual report and disseminate the report to the governor, the general
26 court, the secretary of health and human services, the director of labor and workforce
27 development and the commissioner of public health; and

28 (e) consider the use of current government resources, including, but not limited to, the
29 Workforce Training Fund as may be provided for in the general appropriations act. Any funds
30 allocated to the advisory board shall be deposited with the state treasurer and may be expended

31 by the advisory board in accordance with the conditions of the grants, without specific
32 appropriation. The advisory board may expend for services and other expenses any amounts that
33 the general court may appropriate. The advisory board shall conduct at least 1 public hearing
34 during each year.

35 SECTION 2. Chapter 10 of the General Laws is hereby amended by adding the
36 following section:-

37 Section 75. There shall be established and set up on the books of the commonwealth a
38 separate fund, to be known as the Clara Barton Nursing Excellence Trust Fund. The fund shall
39 consist of all revenues from public and private sources as appropriations, gifts, grants or
40 donations, and from the federal government as reimbursements, grants-in-aid or other receipts to
41 further the purposes of the fund in accordance with the provisions of sections 19F to 19K,
42 inclusive, of chapter 15A, and any interest or investment earnings on such revenues. The
43 revenues credited to the fund under this section shall remain in the fund and shall be expended,
44 without further appropriation, for applications pursuant to said sections 19F to 19K, inclusive, of
45 said chapter 15A. The state treasurer shall deposit and invest monies in the fund in accordance
46 with the sections 34, 34A and 38 of chapter 29 in such a manner as to secure the highest rate of
47 return consistent with the safety of the fund. The fund shall be expended only for the purposes
48 stated in said sections 19F to 19K, inclusive, of said chapter 15A, at the direction of the
49 chancellor of the system of public higher education. On February 1 of each year, the state
50 treasurer shall notify the chancellor of any projected interest and investment earnings available
51 for expenditure from the fund for each fiscal year.

52 SECTION 3. Chapter 15A of the General Laws is hereby amended by inserting after
53 section 19E the following 6 sections:-

54 Section 19F. The department of higher education shall, subject to appropriation,
55 establish a nursing student loan repayment program, to be known as the Clara Barton Nursing
56 Loan Repayment Program, for the purpose of encouraging existing nurses or nurse student
57 graduates committed to becoming clinical instructors or nursing faculty to teach nursing within
58 the commonwealth by providing financial assistance for the repayment of qualified education
59 loans and a nursing faculty position payment program, to be known as the Clara Barton Nurse
60 Educators Assistance Program, by providing compensation to health care facilities to cover nurse
61 scheduled work time spent teaching, as further explained in this section. The department shall
62 adopt guidelines governing the implementation of the programs, which shall include, but need
63 not be limited to, the following:

64 (1) eligibility for the loan repayment program shall be limited to persons who have
65 graduated in the top 25 percent of their undergraduate or graduate class, as certified by the
66 college, university or school of nursing attended by such applicant, or who are otherwise
67 qualified;

68 (2) eligibility for the loan repayment program shall be limited to persons licensed to
69 practice nursing in the commonwealth or entering the nursing profession after September 1,
70 2009, and eligibility for the nurse educators assistance program shall be limited to persons
71 entering the teaching of nursing profession at a college, university or school of nursing within the
72 commonwealth after that date;

73 (3) the commonwealth shall repay a participant's student loan at a rate not to exceed
74 \$200 per month for a period not to exceed 48 months; provided, however, that participants who
75 work less than full time shall receive loan repayment amounts in direct proportion to the
76 percentage of full time worked;

77 (4) repayment shall be made to the participant annually upon the presentation by the
78 participant of satisfactory evidence of payments under the loan;

79 (5) payments by the commonwealth shall cover only loan payments made by a
80 participant during the months when the participant is employed as a nurse in facilities including,
81 but not limited to, acute care hospitals, long-term care or chronic disease hospitals, acute
82 inpatient rehabilitation hospitals, public health hospitals, psychiatric and mental health clinics or
83 hospitals, community or neighborhood health centers, rehabilitation centers or nursing homes, or
84 as a home health, school or public health nurse in the commonwealth, or is employed to teach
85 nursing at a college, university, or school of nursing in the commonwealth.

86 (6) Payments by the commonwealth shall not commence until a participant has been
87 employed as a nurse in the commonwealth, or as a teacher of nursing at a college, university or
88 school of nursing in the commonwealth, for at least 1 year;

89 (7) Participants shall be employed as a nurse in the commonwealth, or as a teacher of
90 nursing at a college, university or school of nursing in the commonwealth, for a minimum of 4
91 years during the loan repayment period, or reimburse the commonwealth for the expense
92 incurred during the repayment period;

93 (8) in the case of those employed as nurses, the department may limit the program to
94 those who work in communities designated by the department of public health, in consultation

95 with the United States Department of Health and Human Services and the Center for Health
96 Professions at Worcester State University, as underserved communities; and

97 (9) the program shall set forth an affirmative action policy and specific annual
98 affirmative action goals and the department shall annually publish a report detailing its efforts to
99 publicize the loan repayment program in order to advance the goals of this affirmative action
100 policy and its success in meeting those goals.

101 For the purposes of this section, “qualified education loan” shall mean any
102 indebtedness including interest on indebtedness incurred to pay tuition or other direct expenses
103 incurred in connection with the pursuit of a practical or diploma nursing program or an
104 associate’s, baccalaureate or graduate degree by an applicant, but shall be limited to any loan
105 which was or is administered by the financial aid office of a practical or diploma nursing
106 program, 2-year or 4-year college, university or school of nursing at which the applicant was
107 enrolled as a practical or diploma nursing school student, or as an undergraduate or graduate
108 student, and which has been secured through a state or federal student loan program, or which
109 was or is administered by a commercial or institutional lender.

110 Section 19G. The department of higher education, subject to appropriation, shall
111 establish an expert nursing corps program, to be known as the Clara Barton Expert Nursing
112 Corps Program, for the purpose of building a group of recognized nurses of high achievement in
113 the profession who shall serve to mentor incoming or novice nurses and to further the goals of
114 the nursing profession. The department shall adopt guidelines governing the implementation of
115 the program. These guidelines shall include, but need not be limited to, the following provisions:

116 (1) the department may select for participation in the program expert nurses who have
117 obtained specialty, modular or advanced practice certification from the American Nurses
118 Credentialing Center, who remain in good standing with the board of registration in nursing, who
119 are current on their continuing education units, and who agree to mentor incoming or novice
120 nurses; provided, however, that the department may develop and include alternatives to
121 certification by the such American Nurses Credentialing Center program if those alternatives
122 maintain equivalent or higher standards of excellence in the practice of nursing;

123 (2) the department, subject to appropriation, may provide expert nurses with partial or
124 full reimbursement for the assessment costs of the American Nurses Credentialing Center
125 certification and shall provide expert nurses with ongoing salary bonuses that shall be limited to
126 \$5,000 per year not to exceed 5 years; provided, however, that such expert nurses shall remain
127 in good standing with the board of registration in nursing, shall be employed in nursing in the
128 commonwealth, and continue to mentor incoming or novice nurses; and provided further that the
129 department shall require evaluation on an annual basis of the efficacy of the incentives provided
130 to participants in the expert nurse mentoring program;

131 (3) the department may authorize grants, in addition to the bonuses paid to expert
132 nurse, to the health care facility, school district, local health agency, home health agency or
133 nursing home in the commonwealth that employees the expert nurse to facilitate time for the
134 expert nurse to engage in mentoring activity; to increase the number of clinical facilities or to
135 allow for the hiring of more nurse faculty; provided however, that the health care facility, school
136 district, local health agency, home health agency or nursing home in the commonwealth shall
137 maintain the expert nurse's salary irrespective of the expert nurse's salary bonus;

138 (4) the department shall set forth an outreach plan to attract underrepresented
139 populations and nurse specialists in the nursing profession in areas which are designated by the
140 department of public health, in consultation with the United States Department of Health and
141 Human Services, as underserved communities;

142 (5) the department, subject to appropriation, may provide experienced nurses who have
143 graduate degrees and such courses in education as the department may determine, who have
144 agreed to teach in a nursing education program in the commonwealth with ongoing salary
145 bonuses to reasonably compensate for the difference between clinical nursing salaries and
146 nursing faculty salaries; provided, however, that these ongoing salary bonuses for these nurse
147 scholars shall be limited to \$25,000 per year and shall not exceed 10 years for nursing faculty
148 who carry a full teaching load as defined by the institution; provided further, that such nurse
149 scholars shall remain in good standing with the board of registration in nursing, shall be
150 employed in nursing education in the commonwealth, and shall continue to educate nurses; and
151 provided further, that an institution of higher education that employs a nurse scholar shall
152 maintain the nurse scholar's salary at a professional level irrespective of the expert nurse's salary
153 bonus.

154 Section 19H. The department of higher education shall make available grants to
155 institutions of higher education and health care institutions in the commonwealth for the purpose
156 of fostering partnerships between higher education institutions and clinical agencies that promote
157 the recruitment and retention of nurses. These grants may also be made available to such
158 institutions for the purpose of establishing and maintaining nurse mentoring or nursing internship
159 programs. The department shall adopt guidelines governing the implementation of this section.

160 Section 19I. The department of higher education shall, subject to appropriation, to
161 establish a scholarship program, to be known as the Clara Barton Scholarship Program, to
162 provide students in approved colleges, universities and schools of nursing in the Commonwealth
163 with scholarships for tuition and fees for the purpose of encouraging outstanding Massachusetts'
164 students to work as nurses in facilities including, but not limited to, acute care hospitals,
165 psychiatric and mental health clinics or hospitals, community or neighborhood health centers or
166 long-term care hospitals, inpatient rehabilitation facilities and other rehabilitation centers,
167 nursing homes, or as a home health, school or public health nurse in the commonwealth, or to
168 teach nursing in colleges, universities or schools of nursing in the commonwealth. The
169 department shall adopt guidelines governing the implementation of the program. Colleges,
170 universities and schools of nursing in the commonwealth may administer the Clara Barton
171 Scholarship Program and select recipients, in accordance with these guidelines. Scholarships
172 may be made available to full or part-time matriculating students in courses of study leading to a
173 degree in nursing or the teaching of nursing. Recipients shall be residents of the commonwealth
174 and outstanding prospects for the nursing profession based on objective measures such as
175 leadership skills, clinical knowledge, class rank, test scores and grade point average, and such
176 other criteria as the department may determine, such as income need. In any given year, the
177 department may target awards to students from geographic and nurse specialty areas in the
178 commonwealth determined by the department of public health, in consultation with the United
179 States Department of Health and Human Services, and the Center for Health Professions at
180 Worcester State University, to be areas experiencing an acute shortage of nurses. A scholarship
181 recipient attending a public or private institution of higher education in the commonwealth shall
182 receive no more than a \$3,500 scholarship for each academic semester that he remains enrolled

183 at such institution and remains in good standing. The names of recipients of such scholarships
184 shall remain confidential unless the recipient waives this confidentiality in writing. The
185 department may also, subject to appropriation, provide a scholarship recipient with a housing
186 voucher, in a form and manner as the department may determine, which shall be equal to but not
187 more than \$200 per month, that may be utilized by the recipient to assist in paying housing costs,
188 including rent or mortgage payments, while he is enrolled in good standing in the college,
189 university or school of nursing.

190 The department, in coordination with the board of education and colleges, universities
191 and schools of nursing in the commonwealth, shall aggressively market the existence of the
192 program to high school students to encourage outstanding candidates to apply to nursing or the
193 teaching of nursing programs in institutions of higher education in the commonwealth. This
194 marketing shall focus on candidates who would otherwise not consider a career in nursing or the
195 teaching of nursing. The department shall set forth an outreach plan to attract underrepresented
196 populations to the nursing profession. Recipients shall be employed as nurses in the
197 commonwealth, or as teachers of nursing at a college, university or school of nursing in the
198 commonwealth, for a minimum of 3 years following graduation. A recipient who participates in
199 the program but does not complete his college education within 7 years of entering college or
200 who fails to complete his 3 year nursing commitment within 7 years after graduation from
201 college or whose license to practice in the commonwealth is not maintained in good standing, or
202 who fails to complete his 3-year teaching commitment within 7 years after graduation from
203 college or from a graduate school, if such is required for teaching nursing at a college, university
204 or school of nursing, shall be obligated to repay the commonwealth any tuition, fees and housing
205 voucher payments advanced to him, and with interest as set by the department.

206 Section 19J. The department of higher education shall, subject to appropriation,
207 develop a program to provide matching grants to any hospital that commits resources or
208 personnel to nurse education programs. The program shall provide a dollar-for-dollar match for
209 any funds committed by a hospital to pay for nurse faculty positions in publicly-funded schools
210 of nursing, including the costs of providing hospital personnel loaned to their schools of nursing.

211 Section 19K. The department of higher education shall, subject to appropriation,
212 designate a portion of the Clara Barton Nursing Excellence Trust Fund, established in section 75
213 of chapter 10, to be used for refresher courses and retraining at accredited schools of nursing for
214 licensed registered nurses returning to bedside care after an absence of more than 1 year, in
215 accordance with standards as shall be approved by the board of registration in nursing.

216 SECTION 4. Chapter 111 of the general laws, as appearing in the 2008 Official
217 Edition, is hereby amended by inserting after section 56 the following 6 sections:-

218 Section 56A. In sections 56A to 56F, inclusive, the following words shall have the
219 following meanings:

220 “Acuity model”, an assessment tool selected and implemented by a hospital, as
221 recommended by a nursing care committee, that assesses the complexity of patient care needs
222 requiring professional nursing care and skills and aligns patient care needs and nursing skills
223 consistent with professional nursing standards.

224 “Department”, the department of public health.

225 “Direct patient care”, care provided by a registered nurse with direct responsibility to
226 oversee or carry out medical regimens or nursing care for 1 or more patients.

227 “Health care workforce”, personnel that have an effect upon the delivery of quality care
228 to patients, including but not limited to, licensed practical nurses, unlicensed assistive personnel
229 or other service, maintenance, clerical, professional or technical workers and other health care
230 workers.

231 “Hospital”, a hospital licensed under section 51 of chapter 111, the teaching hospital of
232 the University of Massachusetts medical school, a licensed private or state-owned and state-
233 operated general acute care hospital, or an acute care unit within a state-operated facility;
234 provided, however, that “hospital” shall not include a licensed non-acute care hospital classified
235 as an inpatient rehabilitation facility, an inpatient psychiatric facility, an inpatient substance
236 abuse facility, or a long term care hospital by the federal Centers for Medicare and Medicaid
237 Services.

238 “Nurse”, a registered nurse licensed under section 74 of chapter 112 or a licensed
239 practical nurse licensed under section 74A of said chapter 112.

240 “Nursing care committee”, an existing or newly created hospital-wide committee of
241 nurses whose functions, in part or in whole, contribute to the development, recommendation and
242 review of the hospital’s nurse staffing plan established pursuant to subsection (d).

243 “Nursing care hours”, the number of hours worked by nursing staff that have direct
244 patient care responsibilities for more than 50 per cent of their shift.

245 “On-call”, time spent by a nurse who is not currently working on the premises of the
246 hospital, and who is either compensated for availability or has agreed as a condition of
247 employment to be available to return to the hospital on short notice if the need arises.

248 “Overtime”, the hours worked by a nurse to deliver patient care, beyond the
249 predetermined and regularly scheduled hours.

250 “Patient days”, the daily average of the number of patients on the unit, as counted at least
251 once during each shift for 24 hours.

252 “Staffing plan”, a written hospital-wide staffing plan for guiding the assignment of
253 patient care nursing staff based on multiple nurse and patient considerations that yield minimum
254 staffing levels for inpatient care units and the adopted acuity model aligning patient care needs
255 with nursing skills required for quality patient care consistent with professional nursing
256 standards.

257 Section 56B. (a) Every acute care hospital shall implement a staffing plan, based on the
258 recommendation of a nursing care committee, which provides for minimum direct care
259 professional registered nurse-to-patient staffing needs for each inpatient care unit. The staffing
260 plan shall include, but not be limited to, the following:

261 (1) Consideration of the complexity of complete care, assessment on patient admission,
262 volume of patient admissions, discharges and transfers, evaluation of progress of a patient’s
263 health status, ongoing physical assessments, planning for a patient’s discharge, assessment after
264 a change in patient condition and assessment of the need for patient referrals.

265 (2) the complexity of clinical professional nursing judgment needed to design and
266 implement a patient’s nursing care plan, the need for specialized equipment and technology, the
267 skill mix of other personnel providing or supporting direct patient care, and involvement in
268 quality improvement activities, professional preparation and experience.

269 (3) patient acuity and the number of patients for whom care is being provided;

270 (4) the requirement that ongoing assessments of a unit's patient acuity levels and nursing
271 staff needed shall be routinely made by the unit nurse manager or his designee;

272 (5) the identification of additional registered nurses available for direct patient care when
273 patients' unexpected needs exceed the planned workload for direct care staff; and

274 (6) mechanisms for the appropriate adjustments of staffing levels that may be required
275 during initial orientation and training periods for nurses assigned to new units.

276 (b) In order to provide staffing flexibility to meet patient needs, every acute care hospital
277 shall identify an acuity model for adjusting the staffing plan for each inpatient care unit.

278 (c) The written staffing plan shall be posted in a conspicuous and accessible location for
279 both patients and direct care staff and shall be posted in electronic format, as determined by
280 regulation promulgated by the department. The plan shall be published on the department
281 website and available to the public.

282 (d) Every acute care hospital shall have a nursing care committee. A hospital shall
283 appoint members of a committee whereby membership limited to the committee's hospital's
284 employees and at least 50 per cent of its members shall be registered nurses providing direct
285 patient care. A nursing care committee's recommendations shall be given significant regard and
286 weight in the hospital's adoption and implementation of a staffing plan. A nursing care
287 committee shall recommend a plan for the hospital based on the principles from the staffing
288 components set forth in subsection (c) and shall provide input and feedback on the following:

289 (i) selection, implementation and evaluation of minimum staffing levels for inpatient
290 care units;

291 (ii) selection, implementation and evaluation of an acuity model to provide staffing
292 flexibility that aligns changing patient acuity with nursing skills required;

293 (iii) Selection, implementation and evaluation of a staffing plan incorporating the items
294 described in clauses (i) and (ii); and

295 .(iv) nurse-to-patient staffing guidelines for all inpatient areas; and

296 (v) current acuity tools and measures in use.

297 (e) A nursing care committee shall address the items described in subsections (b) through
298 (e) semi-annually.

299 (f) The implementation of a staffing plan shall not result in the understaffing or
300 reductions in staffing levels of the health care workforce.

301 (g) Nothing in this section shall be construed to limit, alter or modify the terms,
302 conditions or provisions of a collective bargaining agreement entered into by the hospital.

303 (h) A staffing plan shall be approved by the hospital governing board prior to its filing
304 with the department.

305 (j) A hospital shall file its plan with the department not later than 2 weeks after the start
306 of the hospital's fiscal year.

307 (j) Each hospital shall include with its filing an aggregate review of significant variations
308 between its actual staffing for the preceding hospital fiscal year staffing plan filed with the

309 department for that preceding year, and, if significant variations occurred, a description of the
310 actions taken by the hospital..

311 (k) Current nursing staff schedules shall be available upon request at each patient care
312 unit. Each schedule shall list the daily assigned nursing personnel and average daily census for
313 the unit. The actual nurse staffing assignment roster for each patient care unit shall be available
314 to the department upon request. Upon a roster's expiration, the hospital shall retain the roster for
315 5 years from the date of its expiration.

316 (l) The department shall establish, maintain and advertise a toll-free telephone line and
317 website for nurses, nursing support staff, patients and patient family members to report alleged
318 violations of a staffing plan. The department shall promulgate regulations for the
319 implementation of these services and for investigating any alleged violation registered through
320 these services.

321 Section 56C. (a) If a hospital fails to file its staffing plan within the time required by law, the
322 department shall give immediate notice by mail, postage prepaid, to the hospital of its default. If
323 the hospital fails to file a report within 21 days after such notice of default has been received, the
324 department shall impose a late fine of \$1,000 per day. The hospital may request an
325 administrative review, in writing, within 15 days of the date it receives notice of the imposition
326 of a late fine by the department. The request shall state the reasons why the hospital considers
327 the imposition of the late fine to be incorrect and shall be accompanied by any supporting
328 evidence and arguments. The department shall notify the hospital, in writing, of the results of
329 the administrative review within 20 days of receipt of a request for review. Failure of the
330 department to respond within that time shall be considered confirmation of the imposition of the

331 late fine. The department may require a hospital to resubmit a staffing plan if the plan fails to
332 provide the information required and shall, by regulation, establish an administrative fee for
333 review of staffing plans and for review of any required resubmission of staffing plans. The
334 deadlines and procedures established by the department for a resubmission of a staffing plan,
335 shall apply to late re-submission, and subsequent annual submissions. Any late fines collected
336 by the department shall be deposited in the Clara Barton Nursing Excellence Trust Fund
337 established pursuant to Section 75 of Chapter 10.

338 (b) If the department determines that there is an apparent pattern of failure by a hospital
339 to maintain or adhere to its filed staffing plan, the hospital may be subject to an inquiry by the
340 department to determine the causes of the apparent pattern. If, after such inquiry, the department
341 determines that an official investigation is appropriate and after issuance of written notification
342 to the hospital, the department may conduct an investigation. Upon completion of the
343 investigation and a finding of noncompliance, the department shall give written notification to
344 the hospital about the manner in which the hospital failed to comply with this section. Hospitals
345 shall be granted due process during the investigation, which shall include the following: (1)
346 notice to hospitals that are noncompliant with section 56B; (2) the opportunity for hospitals to
347 submit to the department, through written clarification, justifications for failure to comply with
348 said section 56B; (3) corrective measures to be taken, if any, as determined by the department
349 based upon such justifications which may include: (i) an official notice of failure to comply; (ii)
350 the imposition of additional reporting and monitoring requirements; (iii) the imposition of fines,
351 not to exceed \$3,000 for each finding of noncompliance; (iii) revocation of the facility's license
352 or registration; and (iv) the closing of the particular unit that is noncompliant.

353 (c) A facility may appeal a measure or fine sought to be enforced by the department
354 hereunder to the division of administrative law appeals and any such measure or fine shall not be
355 enforced by the department until final adjudication by the division.

356 (d) The department may conduct random audits of a hospital's nurse staffing plan to
357 ensure that its plan conforms to section 56B.

358 (e) The department shall promulgate regulations consistent with this section.

359 Section 56D. (a) Hospitals shall include in their quality improvement programs a process
360 to collect, monitor and evaluate patient care through the statewide use of evidence-based nurse-
361 sensitive performance measures, to be selected by the department. The department, in
362 consultation with the Betsy Lehman center for patient safety and medical error reduction, the
363 health care quality and cost council and the Massachusetts Hospital Association, Inc., shall select
364 evidence-based nurse-sensitive performance measures from the nationally-recognized measures
365 endorsed by the National Quality Forum and shall include, but not be limited to: patient falls,
366 pressure ulcers, physical or sexual assault, pain management, peripheral IV infiltration; staff mix
367 of registered nurses, licensed practical nurses, nurse assistants and unlicensed assistive
368 personnel; nursing care hours provided per patient day, registered nurse education/certification,
369 and an registered nurse satisfaction survey. The department shall develop a methodology to
370 adjust these nursing care hours per patient day to account for differences in patient
371 characteristics. The department shall develop a uniform format for hospitals to quarterly report
372 on the selected performance measures to the department. The department shall annually report
373 to the general public hospital-specific performance measure data, aggregated industry trends and
374 best practices developed from these reports.

375 (b) The department shall develop a risk-adjusted methodology to compare patient
376 outcomes using nurse sensitive quality measures as related to registered nursing care per patient
377 day in order to rank nursing care among all acute care hospitals as reported in the quarterly
378 reports submitted pursuant to this section and shall provide these comparative rankings to the
379 health care quality and cost council for public posting in conjunction with other hospital quality
380 measures. The department shall not disclose any information to the public unless the
381 information has been reviewed, adjusted, and validated according to the following process:

382 1. The department shall organize an advisory committee, including representatives from the
383 department, public and private hospitals, direct care nursing staff, nursing leaders, physicians,
384 academic researchers, consumers, health insurance companies, organized labor and organizations
385 representing hospitals and physicians. The advisory committee must be meaningfully involved
386 in the development of all aspects of the department's methodology for collecting, analyzing and
387 disclosing the information collected under this section, including collection methods, formatting,
388 and methods and means for release and dissemination.

389 2. (ii) The entire methodology for collecting and analyzing the data shall be disclosed to all
390 relevant organizations and to all hospitals that are the subject of any information to be made
391 available to the public before any public disclosure of such information.

392 3. (iii) Data collection and analytical methodologies shall be used that meet accepted standards
393 of validity and reliability before any information is made available to the public.

394 4. (iv) The limitations of the data sources and analytic methodologies used to develop
395 comparative hospital information shall be clearly identified and acknowledged, including but not
396 limited to, the appropriate and inappropriate uses of the data.

397 5. (v) To the greatest extent possible, comparative hospital information initiatives shall use
398 standard-based norms derived from widely accepted provider-developed practice guidelines.

399 6. (vi) Comparative hospital information and other information that the department has
400 compiled regarding hospitals shall be shared with the hospitals under review prior to public
401 dissemination of such information and these hospitals shall have 30 days to make corrections and
402 to add explanatory comments about the information before the publication.

403 7. (vii) Comparisons among hospitals shall adjust for patient case mix and other relevant risk
404 factors and control for provider peer groups, when appropriate.

405 8. (viii) Effective safeguards to protect against the unauthorized use or disclosure of hospital
406 information shall be developed and implemented.

407 9. (ix) Effective safeguards to protect against the dissemination of inconsistent, incomplete,
408 invalid, inaccurate or subjective hospital data shall be developed and implemented.

409 10. (x) The quality and accuracy of hospital information reported under this section and its data
410 collection, analysis, and dissemination methodologies shall be evaluated regularly.

411 11. (xi) Only the most basic identifying information from mandatory reports shall be used, and
412 information identifying a patient, employee, or licensed professional shall not be released. None
413 of the information the department discloses to the public under this section may be used to
414 establish a standard of care in a private civil action.

415 Section 56E. The department shall establish minimum patient care performance
416 benchmarks for all hospitals based on the evidence-based nurse-sensitive measures collected
417 pursuant to section 56D. The minimum benchmarks shall be based on national and regional

418 quality measurements, further adjusted for hospitals with fewer than 100 acute care licensed
419 beds, and shall be developed in consultation with the Betsy Lehman center for patient safety and
420 medical error reduction, the health care quality and cost council and the Massachusetts Hospital
421 Association, Inc. A hospital that fails to meet these minimum patient performance benchmarks
422 shall be required by the department to implement a remedial plan design to improve patient care.
423 The plan shall incorporate evidence-based measures and strategies for improving nurse sensitive
424 patient outcome measures which may include specific registered nurse to patient limits, if, in the
425 opinion of the department, such staffing limits are needed to improve patient care safety and
426 health care quality. The setting of nurse patient limits for registered nurses shall not result in the
427 understaffing or reductions in staffing levels of the health care workforce.

428 Section 56F. (a) A hospital shall not require or permit a nurse to work more than 12
429 hours in any given shift or to exceed 16 hours in a 24 hour period. A nurse may not be
430 disciplined, dismissed or discharged for refusing to work beyond the hours specified in this
431 paragraph. A nurse who works 12 consecutive hours in a shift shall be given at least 8 hours off
432 from any work between shifts. For the purposes of this paragraph, it shall not be the
433 responsibility of the employer to ensure that a nurse has not violated the limitation of hours
434 worked as specified in this section except for those hours worked in the employment of the
435 employer. Nurses shall solely be responsible for certifying with the board of registration in
436 nursing compliance with the provisions of this subsection during their applicable licensure
437 renewal period.

438 (b)A hospital shall be limited to using mandatory overtime for emergency situations
439 where the safety of a patient requires its use and when there is no reasonable alternative.
440 Whenever a nurse is required to work mandatory overtime, the hospital shall document, in an

441 aggregated manner, such use in the annual nurse staffing plan as filed with the department
442 pursuant to Chapter 111, Section 56A.

443 (c) Nothing in this section shall be construed to limit, alter or modify the terms,
444 conditions or provisions of a collective bargaining agreement entered into by the hospital.

445 SECTION 5. Notwithstanding any general or special law to the contrary, the secretary
446 of administration and finance, in consultation with the secretary of health and human services,
447 shall make an investigation and study of all state agencies or quasi-state agencies to determine
448 the efficacy of existing programs related to health care workforce development and shall file a
449 report with the general court by June 30, 2012 with recommendations for the development of
450 new or redesigned programs to create a pathway for an enhanced health care workforce that shall
451 be needed to adequately care for the people of the Commonwealth by 2020. The investigation
452 and study shall include, but not be limited to, identification of ways to increase the number and
453 diversity of people choosing health care occupations and to increase retention rates among
454 current health care workers in the commonwealth, and recommend actions for measures to
455 coordinate solutions to health care worker shortage in the commonwealth as determined by the
456 department of public health.

457 SECTION 6. Notwithstanding any general or special law to the contrary, the
458 department of higher education, in collaboration with the department of labor and workforce
459 development, the board of registration in nursing, the nursing advisory board established
460 pursuant to section 16H of chapter 6A of the General Laws, and the Massachusetts Center for
461 Nursing, Inc., and the nurse scholar program established pursuant to section 19F of chapter 15,
462 shall make an investigation and study of the nurse faculty shortage in the commonwealth and file

463 a report back with to the clerks of the senate and house of representatives by June 30, 2012 with
464 recommendations to enhance the nurse faculty pipeline within the commonwealth. The
465 investigation and study shall include, but not be limited to, the collection and analysis of nursing
466 data, including: school capacity data including numbers of doctoral and masters prepared faculty;
467 budgeted and vacant positions; projections on intentions to retire; data on the number of students
468 who have been turned away or are on waiting lists due to the shortage of budgeted faculty
469 positions; vacant faculty positions; the capability of both undergraduate and graduate schools to
470 develop nursing programs based on the number of qualified undergraduate or graduate students
471 interested in nursing and the number of available faculty to develop a nursing program, or lack of
472 clinical placement sites; the supply of masters and doctoral prepared nurses in the
473 commonwealth who might be available to move into education positions; and the types and
474 components of partnerships between schools and healthcare facilities focused on sharing of
475 resources to enhance nursing education, research or leadership development. The investigation
476 and analysis shall be conducted on a statewide basis and shall involve both publicly funded and
477 private schools to provide comprehensive data on the current and future extent of the faculty
478 shortage. The investigation shall also produce an analysis of the feasibility of developing a web-
479 based, automated scheduling or staffing system for nursing units on a statewide basis that could
480 be made available to health care facilities on a subscription basis.

481 SECTION 7. Notwithstanding any general or special law to the contrary, the executive
482 office of housing and economic development, in collaboration with the board of education, the
483 department of higher education, and the Massachusetts Hospital Association, Inc., shall develop
484 a comprehensive statewide plan to promote healthcare professions to the general public. The
485 plan shall include specific recommendations that various state agencies may act upon to further

486 the goals of enhancing public interest in health care professions, including but not limited to,
487 methods targeting school-aged children and adults seeking a change in career and increasing the
488 supply of health care workforce. The department shall complete this plan and file a copy with
489 the clerks of the house of representatives and the senate not later than April 15, 2012.

490 SECTION 8. Notwithstanding any general or special law to the contrary, the executive
491 office of health and human services and all agencies, departments and boards within this
492 secretariat, the department of labor and workforce development, the department of higher
493 education and any other state agency, board or department that collects data, conducts surveys or
494 gathers information related to the practice of nursing, the supply of nursing workforce, the
495 supply of nursing faculty or other nursing workforce issues shall regularly submit this data and
496 information to the Massachusetts Center for Nursing, Inc.

497 SECTION 9. Notwithstanding any general or special to the contrary, the department of
498 higher education shall establish an advisory committee consisting of 7 members who shall be
499 professionals representing the nursing profession. At least 4 of the members shall be nursing
500 educators from higher education institutions and the remaining members shall be nurses in
501 practice. The advisory committee shall advise the department about the practice of nursing and
502 how to implement this act in a manner that would best benefit the profession of nursing and
503 fulfill the goals of recruiting and retaining people to the profession of nursing.

504 SECTION 10. Notwithstanding any general or special law the contrary, the department
505 of public health shall develop guidelines for every licensed health care facility to implement an
506 evidence-based policy for safe handling and movement of patients for all shifts and all patient

507 care personnel based on minimum ergonomic standards to reduce the injury rates associated with
508 manual patient handling.

509 SECTION 11. There shall be a special commission for the purpose of studying the
510 limitations of nursing hours in order to reduce fatigue and to improve patient care in hospitals.
511 The commission shall review and study the most current studies and clinical evidence regarding
512 limitation of nursing hours and the effect of such limitation on fatigue and patient safety. The
513 commission shall also work with hospitals to identify the best practices to be used in
514 implementing such limitations on nursing hours. The commission shall consist of the
515 commissioner of public health, and a representative from each of the following: the
516 Massachusetts Hospital Association, Inc., the Massachusetts Organization of Nurse Executives,
517 Inc., the Massachusetts Nurses Association, the Massachusetts Association of Registered Nurses,
518 Inc., the Massachusetts Medical Society, the Blue Cross and Blue Shield of Massachusetts, Inc.,
519 the Massachusetts Association of Health Plans, the Associated Industries of Massachusetts, Inc.,
520 the Massachusetts League of Community Health Centers, 3 teaching and 3 community Hospitals,
521 as the department may determine, a chronic disease hospital, an inpatient rehabilitation hospital,
522 the Massachusetts Coalition for the Prevention of Medical Errors, Inc., the Massachusetts
523 Association of Colleges of Nursing, and, as the department may determine, a representative from
524 community colleges, other nursing organizations, nursing schools and medical schools. The
525 commission shall be jointly chaired by the chairs of the joint committee on health care financing.
526 No action of the commission shall be considered official unless approved by a majority of its
527 members. The commission shall file its final report and any recommendations for legislation and
528 revisions to this act regarding limitation of nursing hours to reduce fatigue and improve patient
529 care with the clerks of the senate and house of representatives, the house and senate committees

530 on ways and means, the house and senate chairs of the joint committee on health care financing,
531 the house and senate chairs of the joint committee on public health, the Betsy Lehman center for
532 patient safety and error reduction and with the governor not later than April 15, 2012.

533 SECTION 12. Section 4 of this act shall take effect on October 1, 2013.