

## THE GENERAL ASSEMBLY OF PENNSYLVANIA

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**HOUSE BILL****No. 106** Session of  
2023

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INTRODUCED BY MEHAFFIE, TOMLINSON, KOSIEROWSKI, KHAN, CIRESI, FIEDLER, FLEMING, HOGAN, HOHENSTEIN, ISAACSON, KIM, MATZIE, NEILSON, PROBST, RABB, SANCHEZ, SMITH-WADE-EL, SOLOMON, WARREN, MULLINS, DONAHUE, KRAJEWSKI, BENHAM, FREEMAN, HARKINS, ZABEL, KINKEAD, ORTITAY, OTTEN, KENYATTA, GALLOWAY, CEPEDA-FREYTIZ, McNEILL, GIRAL, O'MARA, WEBSTER, BOYLE, BOROWSKI, KINSEY, T. DAVIS, HANBIDGE, YOUNG, RADER, BRIGGS, LABS, CURRY, MUNROE, PASHINSKI, CERRATO, WAXMAN, GREEN, PARKER, CONKLIN, STEELE, SIEGEL, KULIK, BULLOCK, STURLA, SAPPEY, SHUSTERMAN, KAUFER, KRUEGER, GUENST, DALEY, BRENNAN, BURGOS, MADDEN, FRIEL, MALAGARI, MAYES, N. NELSON, D. MILLER, GALLAGHER, MERSKI, PISCIOTTANO, BELLMON, SCOTT, DELLOSO, KAZEEM, ROZZI, HADDOCK, MADSEN, CEPHAS, DEASY, ABNEY, WHITE, MARSHALL, FLICK, MAJOR, DELOZIER, EMRICK, McANDREW, D. WILLIAMS, SALISBURY, GERGELY, PIELLI, VITALI, MARKOSEK, TAKAC, FRANKEL, INNAMORATO, HOWARD, SCHWEYER, HILL-EVANS, SAMUELSON, DAWKINS, GUZMAN AND RYNCAVAGE, APRIL 28, 2023

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AS AMENDED ON SECOND CONSIDERATION, HOUSE OF REPRESENTATIVES,  
JUNE 27, 2023

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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 provisions; and imposing penalties.

11 The General Assembly of the Commonwealth of Pennsylvania

12 hereby enacts as follows:

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

1 chapter to read:

2 CHAPTER 8-C

3 HOSPITAL PATIENT PROTECTION PROVISIONS

4 Section 801-C. Definitions.

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

8 "Acuity." The measure of a patient's severity of illness or  
9 medical conditions, including, but not limited to, the stability  
10 of physiological and psychological parameters and the dependency  
11 needs of the patient and the patient's family.

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

16 "Charge nurse." A registered nurse responsible for the  
17 management of a patient care unit.

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

19 "Direct care registered nurse." A registered nurse who is  
20 engaged in direct patient care responsibilities in an inpatient  
21 hospital unit setting for more than 50% of the registered  
22 nurse's working hours.

23 "Direct care staff." Any of the following individuals who  
24 are routinely assigned to patient care and are replaced when  
25 they are absent:

26 (1) registered nurses;

27 (2) licensed practical nurses; or

28 (3) nursing assistants.

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

30 (1) certified as an exclusive representative by the

1 National Labor Relations Board; or

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

3 "HIGH MEDICAL ASSISTANCE HOSPITAL." A HOSPITAL AS DETERMINED <--  
4 UNDER THE MEDICAL ASSISTANCE DEPENDENCY PAYMENT PROVISIONS OF  
5 THE COMMONWEALTH'S APPROVED TITLE XIX STATE PLAN, BASED ON A  
6 HOSPITAL'S APPROVED MEDICAL ASSISTANCE COST REPORT FOR FISCAL  
7 YEAR 2018-2019.

8 "Hospital." An institution licensed by this act as a health  
9 care facility and having an organized medical staff established  
10 for the purpose of providing, by or under the supervision of  
11 physicians, diagnostic and therapeutic services for the care of  
12 individuals who are injured, disabled, pregnant, diseased, sick  
13 or mentally ill or rehabilitation services for the  
14 rehabilitation of individuals who are injured, disabled,  
15 pregnant, diseased, sick or mentally ill. The term includes a  
16 private psychiatric hospital and public psychiatric hospital as  
17 defined by 55 Pa. Code § 1151.2 (relating to definitions).

18 "Intensive care unit." A unit of a hospital that provides  
19 care to critically ill patients who require advanced treatments  
20 such as mechanical ventilation, vasoactive infusions or  
21 continuous renal replacement treatment or who require frequent  
22 assessment and monitoring.

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

25 "Medical-surgical unit." An inpatient unit in which general  
26 medical or post-surgical level of care is provided, excluding a  
27 critical care unit and any unit referred to in sections 802-C,  
28 803-C and 804-C.

29 "RURAL HOSPITAL." AS DEFINED IN SECTION 103 OF THE ACT OF <--  
30 NOVEMBER 27, 2019 (P.L.742, NO.108), KNOWN AS THE PENNSYLVANIA

1 RURAL HEALTH REDESIGN CENTER AUTHORITY ACT.

2 "Safe harbor." A process that protects a direct care  
3 registered nurse from adverse action by the health care facility  
4 where the direct care registered nurse accepts an assignment  
5 despite objection over the ratios prescribed in section 802-C or  
6 the staffing requirements prescribed by the staffing plan in  
7 section 803-C.

8 "Unit clerk." A worker on a nursing unit who schedules  
9 patients for prescribed studies, prepares charts for patients,  
10 answers the phone on the unit and handles other general clerical  
11 tasks.

12 Section 802-C. Staffing ratios.

13 (a) General requirement.--A unit and criteria for patients  
14 on units shall be consistent with the types of units and  
15 patients contained in the Centers for Disease Control and  
16 Prevention Locations and Descriptions and Instructions for  
17 Mapping Patient Care Locations for types of hospital units.

18 (b) Direct care registered nurses.--A hospital must ensure  
19 that at any given time:

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

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

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

27 (i) two patients, if the patients are not in active  
28 labor, experiencing complications or in immediate  
29 postpartum;

30 (ii) one patient if:

1                   (A) the patient is in active labor; or  
2                   (B) the patient is at any stage of labor and is  
3                   experiencing complications; or

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

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

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

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

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

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

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

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

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

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

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

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

30                   (15) In an in-patient psychiatric unit, a direct care

1 registered nurse is assigned to no more than four patients.

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

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

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

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

11 (d) Minimums.--The direct care registered nurse ratios  
12 specified in subsection (b) are the minimum required number of  
13 nurses.

14 (e) Additional staff.--Additional registered nursing staff  
15 in excess of the prescribed ratios in subsection (b) shall be  
16 assigned to direct patient care in accordance with the patients'  
17 acuity and care needs.

18 Section 803-C. Staffing plans.

19 (a) Duty of hospital.--A hospital shall develop a written  
20 hospital-wide staffing plan for direct care and other ancillary  
21 staff in accordance with this section and section 802-C. The  
22 hospital's primary goal in developing the staffing plan shall be  
23 to ensure that the hospital is staffed to meet the health care  
24 needs of patients. A hospital shall implement the written  
25 hospital-wide staffing plan for nursing services that meets the  
26 requirements of this chapter.

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

28 (1) Be based on the specialized qualifications and  
29 competencies of the nursing staff and provide for the skill  
30 mix and level of competency necessary to ensure that the

1 hospital is staffed to meet the health care needs of  
2 patients.

3 (2) Be based on the size of the hospital and a  
4 measurement of hospital unit activity that quantifies the  
5 rate of admissions, discharges and transfers for each  
6 hospital unit and the time required for a direct care  
7 registered nurse belonging to a hospital unit to complete  
8 admissions, discharges and transfers for that hospital unit.

9 (3) Be based on total diagnoses for each hospital unit  
10 and the nursing staff required to manage the set of diagnoses  
11 and the unit's general and predominant patient population as  
12 defined by the Medicare severity diagnosis-related groups  
13 adopted by the Centers for Medicare and Medicaid Services, or  
14 by other measures for patients who are not classified in the  
15 Medicare severity diagnosis-related groups.

16 (4) Be consistent with any nationally recognized  
17 evidence-based standards and guidelines established by  
18 professional nursing specialty organizations and  
19 credentialing bodies.

20 (5) Recognize differences in patient acuity.

21 (6) Recognize the availability of ancillary staff  
22 support on the unit.

23 (7) Provide for additional registered nursing staff in  
24 excess of the prescribed staffing ratios in section 802-C  
25 when necessary, based on patient acuity and nursing care  
26 requirements.

27 (8) Establish a minimum number of additional direct care  
28 staff, unit clerks and charge nurses required on specified  
29 shifts, provided that at least one direct care registered  
30 nurse and one other nonregistered nurse direct care staff is

1 on duty in a unit when a patient is present. Additional  
2 direct care staff requirements shall be based on the direct  
3 care staff needs of individual patients, and patient nursing  
4 care requirements and shall provide for shift-by-shift  
5 staffing for each unit. The staffing plan shall ensure that  
6 the hospital implements the requirements without diminishing  
7 the staffing levels of its ancillary staff.

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

10 (10) Comply with section 802-C.

11 Section 804-C. Staffing transparency.

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

15 (1) A list of on-call nursing staff or staffing agencies  
16 to provide replacement nursing staff in the event of a  
17 vacancy. The list of on-call nursing staff or staffing  
18 agencies shall be sufficient to provide for replacement  
19 nursing staff.

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

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

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

26 (b) When notice of changes required.--If any of the direct  
27 care staff who work at a hospital are represented under a  
28 collective bargaining agreement, the hospital may not change the  
29 direct care staff's wages, hours or other terms and conditions  
30 of employment under the staffing plan unless the hospital first



1 provides notice to and, upon request, bargains with the direct  
2 care staff in the bargaining unit and their exclusive  
3 representative.

4 (c) Relationship of staffing plan to collective bargaining  
5 agreement.--A staffing plan does not create, preempt or modify a  
6 collective bargaining agreement or require a union or hospital  
7 to bargain over the staffing plan while a collective bargaining  
8 agreement is in effect.

9 (d) Submission of staffing plan to department.--A hospital  
10 shall submit to the department a staffing plan adopted in  
11 accordance with this section and submit any change to the plan  
12 no later than 30 days after approval of the changes by the  
13 hospital.

14 Section 805-C. Review of staffing plan.

15 (a) Duty of hospital.--A hospital shall review the written  
16 hospital-wide staffing plan at least once every year.

17 (b) Matters to be reviewed.--In reviewing a staffing plan, a  
18 hospital shall consider:

19 (1) Patient outcomes, including nursing quality  
20 indicators.

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

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

27 (4) The aggregate hours of mandatory overtime worked by  
28 the nursing staff.

29 (5) The aggregate hours of voluntary overtime worked by  
30 the nursing staff.

1           (6) The percentage of shifts for each hospital unit for  
2 which staffing differed from what is required by the staffing  
3 plan.

4           (7) Any other matter determined by the hospital to be  
5 necessary to ensure that the hospital is staffed to meet the  
6 health care needs of patients.

7           (c) Outcome of review.--Upon conclusion of its review of a  
8 staffing plan, a hospital shall:

9           (1) Report whether the staffing plan ensures that the  
10 hospital is staffed to meet the health care needs of  
11 patients.

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

15 Section 806-C. Safe harbor provisions.

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

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

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

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

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

27           (5) The name of the supervisor recording the request, if  
28 applicable.

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

1           (7) A description of the collaboration between the  
2           direct care registered nurse and the supervisor, if  
3           applicable.

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

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

10          (d) Prohibited conduct.--A hospital may not discharge from  
11          duty or otherwise retaliate against an employee for invoking  
12          safe harbor or filing a complaint for violations of this  
13          chapter.

14          Section 807-C. Enforcement.

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

16                (1) Establish a method by which a complaint may be filed  
17                along with supporting documentation through the department's  
18                publicly accessible Internet website regarding a violation of  
19                this chapter.

20                (2) No later than 30 days after receiving a complaint of  
21                a violation of this chapter, open an investigation of the  
22                hospital and provide a notice of the investigation to the  
23                complainant, the hospital and to the exclusive  
24                representative, if any, of the employee filing the complaint.  
25                The notice shall include a summary of the complaint but not  
26                the complainant's name or the specific date, shift or unit,  
27                and the calendar week in which the complaint arose.

28                (3) Conclude the investigation no later than 60 days  
29                after opening the investigation. The department shall provide  
30                a written report on the complaint to the complainant and the

1 exclusive representative if any, of the complainant. The  
2 report:

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

4 (ii) Shall include the nature of the alleged  
5 violation or violations.

6 (iii) Shall include the department's findings and  
7 factual bases for the findings.

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

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

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

16 (4) In conducting an investigation, make on-site  
17 inspections of the unit, conduct interviews, compel the  
18 production of documents and records pertaining to the  
19 complaint and take any other steps deemed necessary to  
20 investigate the complaint.

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

26 Section 808-C. Violations and right to issue penalties.

27 (A) IMPOSITION.--The department may impose civil and <--  
28 administrative penalties to ensure compliance with this chapter,  
29 including, but not limited to:

30 (1) Corrective action plans.

- 1           (2) Civil penalties.
- 2           (3) Declaration of immediate jeopardy.
- 3           (4) Suspension or revocation of a hospital license.

4 ~~Penalties shall increase in severity for repeat violations. The~~ <--  
5 ~~department shall adopt by rule a schedule establishing the~~  
6 ~~amount of civil penalty that may be imposed for a violation,~~  
7 ~~except that a civil penalty may be no less than \$2,000 per~~  
8 ~~violation.~~

9           (B) AMOUNT.--PENALTIES SHALL INCREASE IN SEVERITY FOR REPEAT <--  
10 VIOLATIONS. THE DEPARTMENT SHALL ADOPT BY RULE A SCHEDULE  
11 ESTABLISHING THE AMOUNT OF CIVIL PENALTY THAT MAY BE IMPOSED FOR  
12 A VIOLATION, EXCEPT THAT A CIVIL PENALTY MAY BE NO LESS THAN  
13 \$1,000 AND NO MORE THAN \$2,500 PER VIOLATION.

14           (C) GRANT.--MONEY COLLECTED BY THE DEPARTMENT UNDER THIS  
15 SECTION SHALL BE USED TO ESTABLISH A GRANT PROGRAM WITHIN THE  
16 DEPARTMENT FOR THE PURPOSE OF RECRUITMENT AND RETENTION OF  
17 REGISTERED NURSES. GRANTS MAY ONLY BE AWARDED TO RURAL HOSPITALS  
18 AND HIGH MEDICAL ASSISTANCE HOSPITALS. THE DEPARTMENT SHALL  
19 DEVELOP AN APPLICATION FORM AND SHALL POST THE FORM  
20 ELECTRONICALLY ON THE DEPARTMENT'S PUBLICLY ACCESSIBLE INTERNET  
21 WEBSITE.

22           (D) APPLICABILITY.--

23           (1) EXCEPT AS PROVIDED UNDER PARAGRAPH (2), THIS SECTION  
24 SHALL NOT APPLY TO HOSPITALS UNTIL ONE YEAR AFTER THE  
25 EFFECTIVE DATE OF THIS SECTION.

26           (2) THIS SECTION SHALL NOT APPLY TO RURAL HOSPITALS OR  
27 HIGH MEDICAL ASSISTANCE HOSPITALS UNTIL TWO YEARS AFTER THE  
28 EFFECTIVE DATE OF THIS SECTION.

29 Section 809-C. Public posting.

30 The department shall post on a publicly accessible Internet

1 website maintained by the department:

2 (1) The hospital staffing plans received by the  
3 department.

4 (2) Any report, described in section 807-C, made  
5 pursuant to an investigation of a complaint for which the  
6 department issued a warning or imposed a civil or  
7 administrative penalty under sections 807-C and 808-C.

8 (3) Any order requiring a hospital to remedy a violation  
9 as described in section 807-C.

10 (4) The department shall maintain for public inspection  
11 and make publicly available records of civil or  
12 administrative penalties, including license suspensions,  
13 revocations, corrective action plans or other enforcement  
14 actions imposed on hospitals that violate this chapter.

15 Section 810-C. Emergency declarations.

16 (a) Duties of hospital.--If an emergency causes a  
17 significant and atypical change in the number of patients on a  
18 unit BEYOND NORMAL FLUCTUATIONS IN A CENSUS, INCLUDING, BUT NOT <--  
19 LIMITED TO, A MASS CASUALTY EVENT OR A GOVERNMENT-DECLARED  
20 EMERGENCY BY THE FEDERAL, STATE, COUNTY OR MUNICIPAL GOVERNMENT,  
21 the hospital shall demonstrate that immediate and diligent  
22 efforts were made to maintain required staffing levels. The  
23 hospital must maintain such diligent efforts to meet the  
24 requirements of this chapter for the full duration of the  
25 emergency.

26 (b) Definitions. As used in this section, the following <--  
27 words and phrases shall have the meanings given to them in this  
28 subsection unless the context clearly indicates otherwise:

29 "Emergency." An event declared an emergency by the Federal  
30 Government or the head of a State, local, county or municipal

1 ~~government.~~ (RESERVED).

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2 Section 811-C. Implementation.

3 The department may adopt regulations necessary to carry out  
4 this chapter.

5 Section 2. This act shall take effect in ~~six months~~ ONE  
6 YEAR.

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