HOUSE DOCKET, NO. 900 FILED ON: 1/13/2009

HOUSE . . . . No. 3912

The Commonwealth of Massachusetts

PRESENTED BY:

Christine E. Canavan

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.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Ellen Story	3rd Hampshire
Frank I. Smizik	15th Norfolk
Sean Garballey	23rd Middlesex
Jennifer M. Callahan	18th Worcester
Cleon H. Turner	1st Barnstable
John H. Rogers	12th Norfolk
Barbara A. L'Italien	18th Essex
Rosemary Sandlin	3rd Hampden
Willie Mae Allen	6th Suffolk
Steven J. D'Amico	4th Bristol
William C. Galvin	6th Norfolk
David P. Linsky	5th Middlesex
Robert J. Nyman	5th Plymouth
Joyce A. Spiliotis	12th Essex
Alice K. Wolf	25th Middlesex
Robert M. Koczera	11th Bristol
Michael F. Rush	10th Suffolk
Brian P. Wallace	4th Suffolk
Anne M. Gobi	5th Worcester
Carl M. Sciortino, Jr.	34th Middlesex
Matthew C. Patrick	3rd Barnstable
James Dwyer	30th Middlesex
James J. O'Day	14th Worcester District
Michael Brady	9th Plymouth
Pam Richardson	6th Middlesex
Geraldo Alicea	6th Worcester
Martin J. Walsh	13th Suffolk
Mark V. Falzone	9th Essex
Robert P. Spellane	13th Worcester
John J. Binienda	17th Worcester

David L. Flynn	8th Plymouth
Paul Kujawski	8th Worcester
Robert L. Rice, Jr.	2nd Worcester
Lida E. Harkins	13th Norfolk
Patricia A. Haddad	5th Bristol
Geraldine Creedon	11th Plymouth
Sarah K. Peake	4th Barnstable
Peter v. Kocot	1st Hampshire
Steven M. Walsh	11th Essex
Stephen R. Canessa	12th Bristol
Angelo J. Puppolo, Jr.	12th Hampden
Carlo P. Basile	1st Suffolk
Timothy J. Toomey, Jr.	26th Middlesex
Joseph R. Driscoll, Jr.	5th Norfolk
A. Stephen Tobin	2nd Norfolk
Allen J. McCarthy	7th Plymouth
Vincent A. Pedone	15th Worcester
Antonio F.D. Cabral	13th Bristol
Louis L. Kafka	8th Norfolk
Cory Atkins	14th Middlesex
Jennifer Benson	37th Middlesex
Stephen L. DiNatale	3rd Worcester
Michael A. Costello	1st Essex
Kevin Aguiar	7th Bristol
William M. Straus	10th Bristol
Michael J. Moran	18th Suffolk
John W. Scibak	2nd Hampshire
Thomas J. Calter	12th Plymouth
Walter F. Timilty	7th Norfolk
Daniel K. Webster	6th Plymouth
Denise Provost	27th Middlesex
Paul McMurtry	11th Norfolk
Richard J. Ross	9th Norfolk
Kevin G. Honan	17th Suffolk
Benjamin Swan	11th Hampden
John P. Fresolo	16th Worcester
Mary E. Grant	6th Essex
Katherine Clark	32nd Middlesex
Marc R. Pacheco	First Plymouth and Bristol
Linda Dean Campbell	15th Essex
Kathi-Anne Reinstein	16th Suffolk

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. 4783 OF 2007-2008.]

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

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. Chapter 6A of the General Laws is hereby amended by inserting after section 16G the
2 following section:—
3 Section 16H. A nursing advisory board is hereby established within, but not subject to, the control
4 of the executive office of health and human services. The advisory board shall consist of 8 members who
5 shall have a demonstrated background in nursing or health services research and who shall represent the
6 continuum of health care settings and services, including, but not limited to, long-term institutional care,
7 acute care, community-based care, public health, school care, and higher education in nursing. The
8 members shall be appointed by the governor from a list of 10 individuals recommended by the board of
9 registration in nursing and a list of 10 persons recommended by the Massachusetts Center for Nursing,
10 Inc. The advisory board shall elect a chair from among its members and adopt bylaws for its proceedings.
11 Each of the 8 members appointed by the governor, shall serve for a term of 3 years, except that in making
12 his initial appointments, the governor shall appoint 2 members to serve for a term of 1 year, 2 members to
13 serve for a term of 2 years, 4 members to serve for a term of 3 years. Persons may be appointed to fill
14 vacancies who shall serve for the unexpired term. No member shall serve more than 2 consecutive full
15 terms.
16 The advisory board shall:—
17 (a) advise the governor and the general court on matters related to the practice of nursing, including
18 the shortage of nurses across the commonwealth in all settings and services, including long-term
19 institutional care, acute care, community-based care, public health, school care, and higher education in
20 nursing;
21 (b) develop a research agenda, apply for federal and private research grants, and commission and
22 fund research projects to fulfill the agenda;
23 (c) recommend policy initiatives to the governor and the general court;

24 (d) prepare an annual report and disseminate the report to the governor, the general court, the
25 secretary of health and human services, the director of labor and workforce development and the
26 commissioner of public health; and
27 (e) consider the use of current government resources, including, but not limited to, the Workforce
28 Training Fund as provided for time to time in the General Appropriations Act.
29 Any funds granted to the advisory board shall be deposited with the state treasurer and may be
30 expended by the advisory board in accordance with the conditions of the grants, without specific
31 appropriation. The advisory board may expend for services and other expenses any amounts that the
32 general court may appropriate. The advisory board shall conduct at least 1 public hearing during each
33 year.
34 SECTION 2. Section 14 of chapter 13 of the General Laws, as appearing in the 2006 Official
35 Edition, is hereby amended by striking out, in line 35, the word "and", -- and by inserting after the word
36 "nursing", in line 37, the following:- ; and
37 (l) establish an expert nursing corps, to be known as the Clara Barton Expert Nursing Corps, which
38 shall consist of recognized nurses of high achievement in the profession who shall mentor incoming or
39 novice nurses and further the goals of the nursing profession; provided however, that the board shall
40 adopt guidelines governing the implementation of the program; provided further, that such guidelines
41 shall include, but not be limited to, the following provisions: specialty, standing, experience, and
42 successful efforts to enable the nursing profession.
43 SECTION 3. Chapter 15A of the General Laws is hereby amended by inserting after section 15F the
44 following section:---
45 Section 15G. Notwithstanding any general or special law to the contrary, any state or community
46 college, or the university of Massachusetts may enter into employment contracts for a minimum period of
47 5 years with faculty members who teach nursing at such institutions, unless both parties agree to a shorter
48 term of employment. For the purpose of this section in order to preserve the public's health and safety,
49 any nursing faculty positions made vacant by the retirement of any employee receiving benefits in
50 accordance with this section, shall be deemed a position of critical and essential nature and shall be
51 included on the schedule provided by the board of higher education to the house and senate committee on
52 ways and means as set forth in this section.
53 SECTION 4. Said chapter 15A is hereby further amended by inserting after section 19E the
54 following 6 sections:—
55 Section 19F. The board shall establish a student loan repayment program and a faculty position
56 payment program, for the purpose of encouraging outstanding students to work in the profession of
57 nursing or for existing nurses or nurse student graduates to teach nursing within the commonwealth by
58 providing financial assistance for the repayment of qualified education loans or by providing
59 compensation to health care facilities to cover nurse scheduled work time spent teaching. The board of

60 higher education shall adopt guidelines governing the implementation of the program, which shall
61 include, but not be limited to, eligibility, repayment schedules and fair practice measures.
62 Section 19G. The board shall provide grants to institutions of higher education and health care
63 institutions in the commonwealth for the purpose of fostering partnerships between higher education
64 institutions and clinical agencies that promote the recruitment and retention of nurses. Such grants may
65 also be made available to such institutions for the purpose of establishing and maintaining nurse
66 mentoring or nursing internship programs. The board shall adopt guidelines governing the awarding of
67 these grants.
68 Section 19H. The board shall establish the Clara Barton Scholarship Program to provide students in
69 approved Massachusetts colleges, universities and schools of nursing with scholarships for tuition and
70 fees for the purpose of encouraging outstanding Massachusetts students to work as nurses in, but not
71 limited to, acute care hospitals, psychiatric and mental health clinics or hospitals, community or
72 neighborhood health centers, rehabilitation centers, nursing homes, or as a home health, school or public
73 health nurses in the commonwealth, or to teach nursing in colleges, universities, or schools of nursing in
74 the commonwealth. The board of higher education shall adopt guidelines governing the implementation
75 of the Clara Barton Scholarship Program.
76 Colleges, universities, and schools of nursing in the commonwealth may administer the Clara Barton
77 Scholarship Program and select recipients in accordance with guidelines adopted by the board.
78 Scholarships may be made available to full or part time matriculating students in courses of study leading
79 to a degree in nursing or the teaching of nursing. The criteria of the recipients and the amount of the
80 scholarships shall be determined by the board of higher education.
81 Section 19I. The board shall develop a program to provide matching grants to any hospital that
82 commits resources or personnel to nurse education programs. Such program shall provide a dollar-for-
83 dollar match for any funds committed by a hospital to pay for nurse faculty positions in publicly funded
84 schools of nursing, including the costs of providing hospital personnel loaned to said schools of nursing.
85 Section 19J. The board shall appropriate a portion of the Clara Barton Nursing Excellence Trust
86 Fund, established in section 2YYY of chapter 29, to be used for refresher courses and retraining at
87 accredited schools of nursing for licensed registered nurses returning to bedside care.
88 Section 19K. The board shall develop a program to increase the racial and ethnic diversity of the
89 nursing workforce. The program shall focus on the identification, recruitment and retention of nursing
90 students from populations underrepresented in the health care professions and shall pay special attention
91 to economic, social, and educational barriers for the diversification of the nursing workforce.
92 SECTION 5. Chapter 29 of the General Laws is hereby amended by inserting after section 2XXX,
93 the following section:-
94 Section 2YYY. There is hereby established and set up on the books of the commonwealth a separate
95 fund, to be known as the Clara Barton Nursing Excellence Trust Fund, hereinafter referred to as the fund.

96 There shall be credited to the fund all revenues from public, subject to appropriation, and private sources
97 as appropriations, gifts, grants, donations, and from the federal government as reimbursements, grants-in-
98 aid or other receipts to further the purposes of the fund in accordance with sections 19F to 19K, inclusive,
99 of chapter 15A, and any interest or investment earnings on such revenues. All revenues credited to the
100 fund shall remain in the fund and shall be expended, without further appropriation, for the purposes of
101 said sections 19F to 19K, inclusive of said chapter 15A. The state treasurer shall deposit and invest
102 monies in said fund in accordance with sections 34, and 38 in such a manner as to secure the highest rate
103 of return consistent with the safety of the fund. The fund shall be expended only for the purposes stated
104 in said sections 19F to 19K, inclusive, at the direction of the commissioner of higher education,
105 established in section 6 of said chapter 15A.
106 On February 1 of each year, the state treasurer shall notify the advisory board established pursuant to
107 section 16H of chapter 6A of any projected interest and investment earnings available for expenditure
108 from said fund for each fiscal year.
109 SECTION 6. Chapter 111 of the General Laws is hereby amended by adding the following 9
110 sections:—
111 Section 221. As used in sections 221 to 229, inclusive, the following words shall, unless the context
112 clearly requires otherwise, have the following meanings:—
113 "Adjustment of standards", the adjustment of nurse's patient assignment standards in accordance
114 with patient acuity according to, or in addition to, direct-care registered nurse staffing levels determined
115 by the nurse manager, or his designee, using the patient acuity system developed by the department and
116 any alternative patient acuity system utilized by hospitals, if said system is certified by the department.
117 "Acuity", the intensity of nursing care required to meet the needs of a patient; higher acuity usually
118 requires longer and more frequent nurse visits and more supplies and equipment.
119 "Assignment", the provision of care to a particular patient for which a direct-care registered nurse
120 has responsibility within the scope of the nurse's practice, notwithstanding any general or special law to
121 the contrary.
122 "Assist", patient care that a direct-care registered nurse may provide beyond his patient assignments
123 if the tasks performed are specific and time-limited.
124 "Board", the board of registration in nursing.
125 "Circulator", a direct-care registered nurse devoted to tracking key activities in the operating room.
126 "Department", the department of public health.
127 "Direct-care registered nurse", a registered nurse who has accepted direct responsibility and
128 accountability to carry out medical regimens, nursing or other bedside care for patients.
129 "Facility", a hospital licensed under section 51, the teaching hospital of the University of
130 Massachusetts medical school, any licensed private or state-owned and state-operated general acute care
131 hospital, an acute psychiatric hospital, an acute care specialty hospital, or any acute care unit within a

132 state-operated facility. As used in sections 221 to 229, inclusive, this definition shall not include
133 rehabilitation facilities or long-term acute care facilities.
134 "Float nurse", a direct-care registered nurse that has demonstrated competence in any clinical area
135 that he may be requested to work and is not assigned to a particular unit in a facility.
136 "Health Care Workforce", personnel that have an effect upon the delivery of quality care to patients,
137 including but not limited to, licensed practical nurses, unlicensed assistive personnel and/or other service,
138 maintenance, clerical, professional and/or technical workers and other health care workers.
139 "Nurse's patient limit", the maximum number of patients assigned to each direct-care registered
140 nurse at one time on a particular unit.
141 "Mandatory overtime", any employer request with respect to overtime, which, if refused or declined
142 by the employee, may result in an adverse employment consequence to the employee. The term overtime
143 with respect to an employee, means any hours that exceed the predetermined number of hours that the
144 employer and employee have agreed that the employee shall work during the shift or week involved.
145 "Monitor in moderate sedation cases", a direct-care registered nurse devoted to continuously
146 monitoring his patient's vital statistics and other critical symptoms.
147 "Nurse manager", the registered nurse, or his designee, whose tasks include,but are not limited to,
148 assigning registered nurses to specific patients by evaluating the level of experience, training, and
149 education of the direct-care nurse and the specific acuity levels of the patient.
150 "Nurse's patient assignment standard", the optimal number of patients to be assigned to each direct-
151 care registered nurse at one time on a particular unit.
152 "Nursing care", care which falls within the scope of practice as defined in section 80B of chapter
153 112 or is otherwise encompassed within recognized professional standards of nursing practice, including
154 assessment, nursing diagnosis, planning, intervention, evaluation and patient advocacy.
155 "Overwhelming patient influx", an unpredictable or unavoidable occurrence at unscheduled or
156 unpredictable intervals that causes a substantial increase in the number of patients requiring emergent and
157 immediate medical interventions and care, a declared national or state emergency, or the activation of the
158 health care facility disaster diversion plan to protect the public health or safety.
159 "Patient acuity system", a measurement system that is based on scientific data and compares the
160 registered nurse staffing level in each nursing department or unit against actual patient nursing care
161 requirements of each patient, taking into consideration the health care workforce on duty and available for
162 work appropriate to their level of training or education, in order to predict registered nursing direct-care
163 requirements for individual patients based on the severity of patient illness. Said system shall be both
164 practical and effective in terms of hospital implementation.
165 "Teaching hospital", a facility as defined in section 51 that meets the teaching facility definition of
166 the American Association of Medical Colleges.

167 “Temporary nursing service agencies”, also known as the nursing pool as defined in section 72Y,
168 and as regulated by the department.
169 “Unassigned registered nurse”, includes, but not limited to, any nurse administrator, nurse
170 supervisor, nurse manager, or charge nurse that maintains his registered nurse licensing certification but is
171 not assigned to a patient for direct care duties.
172 Section 222. The department shall reevaluate the numbers that comprise the nurse’s patient
173 assignment standards and nurse’s patient limits and the patient acuity system in the evaluation period and
174 then every 3 years thereafter, taking into consideration evolving technology or changing treatment
175 protocols and care practices and other relevant clinical factors.
176 Section 223. (a) The department shall develop nurse’s patient assignment standards which shall be
177 an ideal number of patients assigned to a direct-care registered nurse that will promote equal, high-
178 quality, and safe patient care at all facilities. The standards shall form the basis of nurse staffing plans set
179 forth in section 225. The department shall use, at a minimum, the following information to develop
180 nurse’s patient assignment standards for all facilities: (1) Massachusetts specific data, including, but not
181 limited to, the role of registered nurses in the commonwealth by type of unit, the current staffing plans of
182 facilities, the relative experience and education of registered nurses, the variability of facilities, and the
183 needs of the patient population; (2) fluctuating patient acuity levels; (3) variations among facilities and
184 patient care units; (4) scientific data related to patient outcomes, a rigorous analysis of clinical data
185 related to patient outcomes and valid nationally recognized scientific evidence on patient care, facility
186 medical error rates, and health care quality measures; (5) availability of technology; (6) treatment
187 modalities within behavioral health facilities; and (7) public testimony from both the public and experts
188 within the field.
189 (b) The nurse’s patient assignment standards may be adjustable and flexible, as determined by the
190 department, to consider factors, including but not limited to; varying patient acuity, time of day, and
191 registered nurse experience. The number of patients assigned to each direct-care registered nurse may not
192 be averaged. The nurse’s patient assignment standards may not refer to a total number of patients and a
193 total number of direct-care registered nurses on a unit and shall not be factored over a period of time.
194 (c) The department shall develop nurse’s patient limits which represent the maximum number of
195 patients to be safely assigned to each direct-care registered nurse at one time on a particular unit. The
196 number of patients assigned to each direct-care registered nurse shall not be averaged and each limit shall
197 pertain to only one direct-care registered nurse. Nurse’s patient limits shall not refer to a total number of
198 patients and a total number of direct-care registered nurses on a unit and shall not be factored over a
199 period of time. A facility’s failure to adhere to these nurse’s patient limits shall result in non-compliance
200 with this section and the facility shall be subject to the enforcement procedures herein and section 228.
201 (d) If the commissioner finds that, for any unit, the department cannot arrive at a rationally based
202 limit using available scientific data, the commissioner shall report to: (1) the clerks of the house of

203 representatives and the senate who shall forward the same to the speaker of the house of representatives,
204 the president of the senate , the chairs of the joint committee on public health, and the joint committee on
205 state administration and regulatory oversight; (2) the commissioner of the division of health care
206 financing and policy; and (3) the nursing advisory board as defined in section 16H of chapter 6A, the
207 reasons for the department's failure to arrive at a rationally based limit and the data necessary for the
208 department to determine a limit by the next review period.
209 (e) The setting of nurse's patient assignment standards and nurse's patient limits for registered
210 nurses shall not result in the understaffing or reductions in staffing levels of the health care workforce.
211 The availability of the health care workforce enables registered nurses to focus on the nursing care
212 functions that only registered nurses, by law, are permitted to perform and thereby helps to ensure
213 adequate staffing levels.
214 (f) Nurse's patient assignment standards and nurse's patient limits shall be determined for the
215 following departments, units or types of nursing care: (1) intensive care units; (2) critical care units; (3)
216 neo-natal intensive care; (3) burn units; (4) step-down or intermediate care; (5) operating rooms, (i) not to
217 include a registered nurse working as a circulator (ii) to be determined for registered nurse working as a
218 monitor in moderate sedation cases; (6) post-anesthesia care with the patient remaining under anesthesia
219 or with a ;patient in a post-anesthesia state; (7) emergency department overall; (8) emergency critical
220 care, provided that the triage, radio or other specialty registered nurse is not included; (9) emergency
221 trauma; (10) labor and delivery with separate standards for (i) a patient in active labor, (ii) patients, or
222 couplets, in immediate postpartum, and (iii) patients, or couplets, in postpartum; (11) intermediate care
223 nurseries; (12) well-baby nurseries; (13) pediatric units; (14) psychiatric units; (15) medical and surgical;
224 (16) telemetry; (17) observational or out-patient treatment; (18) transitional care; (19) acute inpatient
225 rehabilitation; (20) specialty care unit; and (21) any other units or types of care determined by the
226 department.
227 (g) The department shall jointly, with the department of mental health, develop nurse's patient
228 assignment standards and nurse's patient limits in acute psychiatric care units. These standards and limits
229 shall not interfere with the licensing standards of the department of mental health.
230 (h) Nothing in this section shall exempt a facility that identifies a unit by a name or term other than
231 those used in this section, from complying with the nurse's patient assignment standards and nurse's
232 patient limits and other provisions established in this section for care specific to the types of units listed.
233 Section 224. (a) The department shall develop a patient acuity system, as defined in section 221.
234 The department may also certify patient acuity systems developed or utilized by facilities. Patient acuity
235 systems shall include standardized criteria determined by the department. The patient acuity system shall
236 be used by facilities to: (1) assess the acuity of individual patients and assign a value, within a numerical
237 scale, to each individual patient; (2) establish a methodology for aggregating patient acuity; (3) monitor
238 and address the fluctuating level of acuity of each patient; (4) supplement the nurse's patient assignments

239 and indicate the need for adjustment of direct-care registered nurse staffing as patient acuity changes; and
240 (5) assess the need for health care workforce staff to ensure nurses' focus on the delivery of patient care.
241 (b) The patient acuity system designed by the department or other patient acuity system used by a
242 facility and certified by the department shall be used in determining adjustments in the number of direct-
243 care registered nurses due to the following factors: (1) the need for specialized equipment and technology;
244 (2) the intensity of nursing interventions required and the complexity of clinical nursing judgment needed
245 to design, implement and evaluate the patient's nursing care plan consistent with professional standards of
246 care; (3) the amount of nursing care needed, both in number of direct-care registered nurses and skill mix
247 of members of the health care workforce necessary to the delivery of quality patient care required on a
248 daily basis for each patient in a nursing department or unit, the proximity of patients, the proximity and
249 availability of other resources, and facility design; (4) appropriate terms and language that are readily
250 used and understood by direct-care registered nurses; and (5) patient care services provided by registered
251 nurses and the health care workforce.
252 (c) The patient acuity system shall include a method by which facilities may adjust a nurse's patient
253 assignments within the limits determined by the department as follows: (1) a nurse manager or designee
254 shall adjust the patient assignments according to the patient acuity system whenever practicable as
255 determined by need; (2) a nurse manager or designee shall adjust the patient assignments when the
256 department-developed or certified patient acuity system indicates a change in acuity of any particular
257 patient to the extent that it triggers an alert mechanism tied to the aggregate patient acuity; (3) a nurse
258 manager or designee shall be responsible for reassigning patients to comply with the patient acuity
259 system, provided that the nurse manager may rearrange patient assignments within the direct-care
260 registered nurses already under management and may also utilize an available float nurse; (4) at any time,
261 any registered nurse may assess the accuracy of the patient acuity system as applied to a patient in the
262 registered nurse's care.
263 Nothing in this section shall supersede or replace any requirements otherwise mandated by law,
264 regulation or collective bargaining contract so long as the facility meets the requirements determined by
265 the department.
266 Section 225. As a condition of licensing by the department, each facility shall submit annually to the
267 department a prospective staffing plan with a written certification that the staffing plan is sufficient to
268 provide adequate and appropriate delivery of health care services to patients for the ensuing year. A
269 staffing plan shall: (1) incorporate information regarding the number of licensed beds and amount of
270 critical technical equipment associated with each bed in the entire facility; (2) adhere to the nurse's
271 patient assignment standards; (3) employ the department -developed or facility-developed or any
272 alternative patient acuity system developed or utilized by a facility and certified by the department when
273 addressing fluctuations in patient acuity levels that may require adjustments in registered nurse staffing
274 levels as determined by the department; (4) provide for orientation of registered nursing staff to assigned

275 clinical practice areas, including temporary assignments; (5) include other unit or department activity
276 such as discharges, transfers and admissions, and administrative and support tasks that are expected to be
277 done by direct-care registered nurses in addition to direct nursing care; (6) include written reports of the
278 facility's patient aggregate outcome data; (7) incorporate the assessment criteria used to validate the
279 acuity system relied upon in the plan; and (8) include services provided by the health care workforce
280 necessary to the delivery of quality patient care.

281 As a condition of licensing, each facility shall submit annually to the department an audit of the
282 preceding year's staffing plan. The audit shall compare the staffing plan with measurements of actual
283 staffing, as well as measurements of actual acuity for all units within the facility assessed through the
284 patient acuity system.

285 Section 226. (a) A direct-care registered nurse at the beginning of the nurse's shift will be assigned
286 to a certain patient or patients by the nurse manager, who shall use professional judgment in so assigning,
287 provided that the number of patients so assigned shall not exceed the nurse's patient limit associated with
288 the unit.

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

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

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

302 (e) For the purposes of complying with the requirements set forth in this section, except in cases of
303 federal or state government declared public emergencies, or a facility-wide emergency, no facility may
304 employ mandatory overtime.

305 Section 227. (a) No facility shall directly assign any unlicensed personnel to perform non-delegable
306 licensed nurse functions to replace care delivered by a licensed registered nurse. Unlicensed personnel
307 are prohibited from performing functions which require the clinical assessment, judgment and skill of a
308 licensed registered nurse. Such functions shall include, but not be limited to: (1) nursing activities which
309 require nursing assessment and judgment during implementation; (2) physical, psychological, and social
310 assessment which requires nursing judgment, intervention, referral or follow-up; (3) formulation of the

311 plan of nursing care and evaluation of the patient's response to the care provided; (4) administration of
312 medications; and (5) health teaching and health counseling.
313 (b) For purposes of compliance with this section, no registered nurse shall be assigned to a unit or a
314 clinical area within a facility unless the registered nurse has an appropriate orientation in the clinical area
315 sufficient to provide competent nursing care and has demonstrated current competency levels through
316 accredited institutions and other continuing education providers.
317 Section 228. (A) If a facility can reasonably demonstrate to the department, with sufficient
318 documentation as determined by the appropriate entity, the attorney general or the division of health care
319 finance and policy, extreme financial hardship as a consequence of meeting the requirements set forth in
320 sections 221 to 229, inclusive, then the facility may apply to the department for a waiver of up to 9
321 months.
322 (B) As a condition of licensing, a facility required to have a staffing plan under this section shall
323 make available daily on each unit the written nurse staffing plan to reflect the nurse's patient assignment
324 standard and the nurse's patient limit as a means of consumer information and protection.
325 (C) The department shall enforce paragraphs (1) to (6), inclusive, as follows: (1) If the department
326 determines that there is an apparent pattern of failure by a facility to maintain or adhere to nurse's patient
327 limits in accordance with sections 221 to 228, inclusive, the facility may be subject to an inquiry by the
328 department to determine the causes of the apparent pattern. If, after such inquiry, the department
329 determines that an official investigation is appropriate and after issuance of written notification to the
330 facility, the department may conduct an investigation. Upon completion of the investigation and a finding
331 of noncompliance, the department shall give written notification to the facility as to the manner in which
332 the facility failed to comply with sections 221 to 228, inclusive. Facilities shall be granted due process
333 during the investigation, which shall include the following: (a) notice shall be granted to facilities that are
334 noncompliant with sections 221 to 228, inclusive; (b) facilities shall be afforded the opportunity to submit
335 to the department, through written clarification, justifications for failure to comply with sections 221 to
336 228, inclusive, if so determined by said department, including, but not limited to, patient outcome data
337 and other resources and personnel available to support the registered nurse and patients in the unit,
338 provided however, that facilities shall bear the burden of proof for any and all justifications submitted to
339 the department; (c) based upon such justifications, the department may determine any corrective
340 measures to be taken, if any. Such measures may include: (i) an official notice of failure to comply; (ii)
341 the imposition of additional reporting and monitoring requirements; (iii) revocation of said facility's
342 license or registration; and (iv) the closing of the particular unit that is noncompliant.
343 (2) Failure to comply with limited nurse staffing requirements shall be evidence of noncompliance
344 with this section.
345 (3) Failure to comply with the provisions of this section is actionable.

346 (4) If the department issues an official notice of failure to comply, as set forth in paragraph (1) of
347 subsection (C) and subclause (i) of clause (c) of said paragraph (1) following submission to and
348 adjudication by the department of justifications for failure to comply submitted by a facility pursuant to
349 clause (b) of paragraph (1) of said subsection (C) to a facility found in noncompliance with limits, the
350 facility shall prominently post its notice within each noncompliant unit. Copies of the notice shall be
351 posted by the facility immediately upon receipt and maintained for 14 consecutive days in conspicuous
352 places including all places where notices to employees are customarily posted. The department shall post
353 the notices on its website immediately after a finding of noncompliance. The notice shall remain on the
354 department's website for 14 consecutive days or until such noncompliance is rectified, whichever is
355 longer.
356 (5) If a facility is repeatedly found in noncompliance based on a pattern of failure to comply as
357 determined by the department, the commissioner may fine the facility not more than $3,000 for each
358 finding of noncompliance.
359 (6) Any facility may appeal any measure or fine sought to be enforced by the department hereunder
360 to the division of administrative law appeals and any such measure or fine shall not be enforced by the
361 department until final adjudication by the division.
362 (7) The department may promulgate rules and regulations necessary to enforce this section.
363 Section 229. The department of public health shall provide for (1) an accessible and confidential
364 system to report any failure to comply with requirements of sections 221 to 228, inclusive, and (2) public
365 access to information regarding reports of inspections, results, deficiencies and corrections under said
366 sections 221 to 228, inclusive, unless such information is restricted by law or regulation. Any person who
367 makes such a report shall identify themselves and substantiate the basis for the report; provided, however,
368 that the identity of said person shall be kept confidential by the department.
369
370 SECTION 7. The department of public health shall include in its regulations pertaining to temporary
371 nursing service agencies, or nursing pools, as defined in section 72Y of chapter 111 of the General Laws,
372 and as regulated by the department, parameters in which the department shall deny registration and
373 operation of said agencies only if the agency attempts to increase costs to facilities by at least 10 per cent.
374 SECTION 8. Section 7 is hereby repealed.
375 SECTION 9. The department of public health shall submit 2 written reports on its progress in
376 carrying out this act. Said department shall report to the general court the results of its 2 written reports to
377 the clerks of the house of representatives and the senate who shall forward the same to the president of the
378 senate, the speaker of the house of representatives, the chairs of the joint committee on public health. The
379 first report shall be filed on or before March 1, 2009 and the second report shall be filed on or before
380 December 1, 2010.

381 SECTION 10. The department of public health shall initially evaluate the numbers that comprise the
382 nurse's patient assignment standards and nurse's patient limits set forth in sections 221 to 228, inclusive
383 of chapter 111 of the General Laws on or before January 1, 2013.
384 SECTION 11. The department of public health, shall develop a comprehensive statewide plan to
385 promote the nursing profession in collaboration with: the executive office of housing and economic
386 development, the board of education, the board of higher education, the board of registration in nursing,
387 the Massachusetts Nurses Association, 1199SEIU, the Massachusetts Hospital Association, Inc., the
388 Massachusetts Organization of Nurse Executives Inc., and any other entity deemed relevant by the
389 department. The plan shall include specific recommendations to increase interest in the nursing
390 profession and increase the supply of registered nurses in the workforce, including recommendations that
391 may be carried out by state agencies. The plan shall be filed with the clerks of the house of representatives
392 and the senate, who shall forward the same to the president of the senate and the speaker of the house of
393 representatives on or before April 15, 2009.
394 SECTION 12. Teaching hospitals, as defined in section 221 of chapter 111 of the General Laws,
395 shall meet the applicable requirements of sections 221 to 229, inclusive of said chapter 111 of the General
396 Laws on or before October 1, 2009. All other facilities, as defined in section 221 of chapter 111 of the
397 General Laws, shall meet the applicable requirements. of sections 221 to 229, inclusive of said chapter
398 111 of the General Laws no later than October 1, 2011.
399 SECTION 13. Section 8 shall take effect on December 1, 2014.
400 SECTION 14. The department of public health shall, on or before January, 1, 2009, promulgate
401 regulations defining criteria and proscribing the process for establishing or certifying by the department a
402 standardized patient acuity system, as defined in section 221 of chapter 111 of the General Laws,
403 developed or utilized by a facility as defined in said section 221 of said chapter 111.
404 SECTION 15. The department of public health shall, on or before March 1, 2009, develop a
405 standardized patient acuity system or certify a facility developed or utilized patient acuity systems, as
406 defined in section 221 of chapter 111 of the General Laws, to be utilized by all facilities to monitor the
407 number of direct-care registered nurses needed to meet patient acuity level.
408 SECTION 16. The department of public health shall, on or before June 1, 2009, establish, but not
409 before the development or certification of standardized patient acuity systems, nurse's patient assignment
410 standards and nurse's patient limits as defined in section 221 of chapter 111 of the General Laws.
411 SECTION 17. The department of public health shall, on or before June 1, 2009, promulgate
412 regulations to implement the requirements of section 229 of chapter 111 of the General Laws.