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# HOUSE . . . . . . . . . . . . . . . No. 3912

The Commonwealth of Massachusetts

**In the Year Two Thousand 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
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 bylaws 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 a term of 1 year, 2
14 members to serve for a term of 2 years, 4 members to serve for a term 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 provided for time to time in the General Appropriations Act.

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

35 SECTION 2. Section 14 of chapter 13 of the General Laws, as appearing in the 2006
36 Official Edition, is hereby amended by striking out, in line 35, the word “and”, -- and by
37 inserting after the word “nursing”, in line 37, the following:- ; and

38 (l) establish an expert nursing corps, to be known as the Clara Barton Expert Nursing
39 Corps, which shall consist of recognized nurses of high achievement in the profession who shall
40 mentor incoming or novice nurses and further the goals of the nursing profession; provided
41 however, that the board shall adopt guidelines governing the implementation of the program;
42 provided further, that such guidelines shall include, but not be limited to, the following
43 provisions: specialty, standing, experience, and successful efforts to enable the nursing
44 profession.

45 SECTION 3. Chapter 15A of the General Laws is hereby amended by inserting after
46 section 15F the following section:---

47 Section 15G. Notwithstanding any general or special law to the contrary, any state or
48 community college, or the university of Massachusetts may enter into employment contracts for
49 a minimum period of 5 years with faculty members who teach nursing at such institutions, unless
50 both parties agree to a shorter term of employment. For the purpose of this section in order to
51 preserve the public’s health and safety, any nursing faculty positions made vacant by the
52 retirement of any employee receiving benefits in accordance with this section, shall be deemed a
53 position of critical and essential nature and shall be included on the schedule provided by the
54 board of higher education to the house and senate committee on ways and means as set forth in
55 this section.

56 SECTION 4. Said chapter 15A is hereby further amended by inserting after section 19E
57 the following 6 sections:—

58 Section 19F. The board shall establish a student loan repayment program and a faculty
59 position payment program, for the purpose of encouraging outstanding students to work in the
60 profession of nursing or for existing nurses or nurse student graduates to teach nursing within the
61 commonwealth by providing financial assistance for the repayment of qualified education loans
62 or by providing compensation to health care facilities to cover nurse scheduled work time spent
63 teaching. The board of higher education shall adopt guidelines governing the implementation of
64 the program, which shall include, but not be limited to, eligibility, repayment schedules and fair
65 practice measures.

66 Section 19G. The board shall provide grants to institutions of higher education and
67 health care institutions in the commonwealth for the purpose of fostering partnerships between
68 higher education institutions and clinical agencies that promote the recruitment and retention of
69 nurses. Such grants may also be made available to such institutions for the purpose of
70 establishing and maintaining nurse mentoring or nursing internship programs. The board shall
71 adopt guidelines governing the awarding of these grants.

72 Section 19H. The board shall establish the Clara Barton Scholarship Program to provide
73 students in approved Massachusetts colleges, universities and schools of nursing with
74 scholarships for tuition and fees for the purpose of encouraging outstanding Massachusetts
75 students to work as nurses in, but not limited to, acute care hospitals, psychiatric and mental
76 health clinics or hospitals, community or neighborhood health centers, rehabilitation centers,
77 nursing homes, or as a home health, school or public health nurses in the commonwealth, or to

78 teach nursing in colleges, universities, or schools of nursing in the commonwealth. The board of
79 higher education shall adopt guidelines governing the implementation of the Clara Barton
80 Scholarship Program.

81 Colleges, universities, and schools of nursing in the commonwealth may administer the
82 Clara Barton Scholarship Program and select recipients in accordance with guidelines adopted by
83 the board. Scholarships may be made available to full or part time matriculating students in
84 courses of study leading to a degree in nursing or the teaching of nursing. The criteria of the
85 recipients and the amount of the scholarships shall be determined by the board of higher
86 education.

87 Section 19I. The board shall develop a program to provide matching grants to any
88 hospital that commits resources or personnel to nurse education programs. Such program shall
89 provide a dollar-for-dollar match for any funds committed by a hospital to pay for nurse faculty
90 positions in publicly funded schools of nursing, including the costs of providing hospital
91 personnel loaned to said schools of nursing.

92 Section 19J. The board shall appropriate a portion of the Clara Barton Nursing
93 Excellence Trust Fund, established in section 2YYY of chapter 29, to be used for refresher
94 courses and retraining at accredited schools of nursing for licensed registered nurses returning to
95 bedside care.

96 Section 19K. The board shall develop a program to increase the racial and ethnic
97 diversity of the nursing workforce. The program shall focus on the identification, recruitment
98 and retention of nursing students from populations underrepresented in the health care

99 professions and shall pay special attention to economic, social, and educational barriers for the
100 diversification of the nursing workforce.

101 SECTION 5. Chapter 29 of the General Laws is hereby amended by inserting after
102 section 2XXX, the following section:-

103 Section 2YYY. There is hereby established and set up on the books of the
104 commonwealth a separate fund, to be known as the Clara Barton Nursing Excellence Trust Fund,
105 hereinafter referred to as the fund. There shall be credited to the fund all revenues from public,
106 subject to appropriation, and private sources as appropriations, gifts, grants, donations, and from
107 the federal government as reimbursements, grants-in-aid or other receipts to further the purposes
108 of the fund in accordance with sections 19F to 19K, inclusive, of chapter 15A, and any interest or
109 investment earnings on such revenues. All revenues credited to the fund shall remain in the fund
110 and shall be expended, without further appropriation, for the purposes of said sections 19F to
111 19K, inclusive of said chapter 15A. The state treasurer shall deposit and invest monies in said
112 fund in accordance with sections 34, and 38 in such a manner as to secure the highest rate of
113 return consistent with the safety of the fund. The fund shall be expended only for the purposes
114 stated in said sections 19F to 19K, inclusive, at the direction of the commissioner of higher
115 education, established in section 6 of said chapter 15A.

116 On February 1 of each year, the state treasurer shall notify the advisory board established
117 pursuant to section 16H of chapter 6A of any projected interest and investment earnings
118 available for expenditure from said fund for each fiscal year.

119 SECTION 6. Chapter 111 of the General Laws is hereby amended by adding the
120 following 9 sections:—

121 Section 221. As used in sections 221 to 229, inclusive, the following words shall, unless
122 the context clearly requires otherwise, have the following meanings:—

123 "Adjustment of standards", the adjustment of nurse's patient assignment standards in
124 accordance with patient acuity according to, or in addition to, direct-care registered nurse
125 staffing levels determined by the nurse manager, or his designee, using the patient acuity system
126 developed by the department and any alternative patient acuity system utilized by hospitals, if
127 said system is certified by the department.

128 "Acuity", the intensity of nursing care required to meet the needs of a patient; higher
129 acuity usually requires longer and more frequent nurse visits and more supplies and equipment.

130 "Assignment", the provision of care to a particular patient for which a direct-care
131 registered nurse has responsibility within the scope of the nurse's practice, notwithstanding any
132 general or special law to the contrary.

133 "Assist", patient care that a direct-care registered nurse may provide beyond his patient
134 assignments if the tasks performed are specific and time-limited.

135 "Board", the board of registration in nursing.

136 "Circulator", a direct-care registered nurse devoted to tracking key activities in the
137 operating room.

138 "Department", the department of public health.

139 "Direct-care registered nurse", a registered nurse who has accepted direct responsibility
140 and accountability to carry out medical regimens, nursing or other bedside care for patients.

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

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

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

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

154 “Mandatory overtime”, any employer request with respect to overtime, which, if refused
155 or declined by the employee, may result in an adverse employment consequence to the
156 employee. The term overtime with respect to an employee, means any hours that exceed the
157 predetermined number of hours that the employer and employee have agreed that the employee
158 shall work during the shift or week involved.

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

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

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

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

170 “Overwhelming patient influx”, an unpredictable or unavoidable occurrence at
171 unscheduled or unpredictable intervals that causes a substantial increase in the number of
172 patients requiring emergent and immediate medical interventions and care, a declared national or
173 state emergency, or the activation of the health care facility disaster diversion plan to protect the
174 public health or safety.

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

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

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

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

189 Section 222. The department shall reevaluate the numbers that comprise the nurse’s
190 patient assignment standards and nurse’s patient limits and the patient acuity system in the
191 evaluation period and then every 3 years thereafter, taking into consideration evolving
192 technology or changing treatment protocols and care practices and other relevant clinical factors.

193 Section 223. (a) The department shall develop nurse’s patient assignment standards
194 which shall be an ideal number of patients assigned to a direct-care registered nurse that will
195 promote equal, high-quality, and safe patient care at all facilities. The standards shall form the
196 basis of nurse staffing plans set forth in section 225. The department shall use, at a minimum,
197 the following information to develop nurse’s patient assignment standards for all facilities: (1)
198 Massachusetts specific data, including, but not limited to, the role of registered nurses in the
199 commonwealth by type of unit, the current staffing plans of facilities, the relative experience and
200 education of registered nurses, the variability of facilities, and the needs of the patient
201 population; (2) fluctuating patient acuity levels; (3) variations among facilities and patient care
202 units; (4) scientific data related to patient outcomes, a rigorous analysis of clinical data related to
203 patient outcomes and valid nationally recognized scientific evidence on patient care, facility

204 medical error rates, and health care quality measures; (5) availability of technology; (6) treatment
205 modalities within behavioral health facilities; and (7) public testimony from both the public and
206 experts within the field.

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

213 (c) The department shall develop nurse's patient limits which represent the maximum
214 number of patients to be safely assigned to each direct-care registered nurse at one time on a
215 particular unit. The number of patients assigned to each direct-care registered nurse shall not be
216 averaged and each limit shall pertain to only one direct-care registered nurse. Nurse's patient
217 limits shall not refer to a total number of patients and a total number of direct-care registered
218 nurses on a unit and shall not be factored over a period of time. A facility's failure to adhere to
219 these nurse's patient limits shall result in non-compliance with this section and the facility shall
220 be subject to the enforcement procedures herein and section 228.

221 (d) If the commissioner finds that, for any unit, the department cannot arrive at a
222 rationally based limit using available scientific data, the commissioner shall report to: (1) the
223 clerks of the house of representatives and the senate who shall forward the same to the speaker of
224 the house of representatives, the president of the senate , the chairs of the joint committee on
225 public health, and the joint committee on state administration and regulatory oversight; (2) the

226 commissioner of the division of health care financing and policy; and (3) the nursing advisory
227 board as defined in section 16H of chapter 6A, the reasons for the department's failure to arrive
228 at a rationally based limit and the data necessary for the department to determine a limit by the
229 next review period.

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

235 (f) Nurse's patient assignment standards and nurse's patient limits shall be determined for
236 the following departments, units or types of nursing care: (1) intensive care units; (2) critical care
237 units; (3) neo-natal intensive care; (3) burn units; (4) step-down or intermediate care; (5)
238 operating rooms, (i) not to include a registered nurse working as a circulator (ii) to be determined
239 for registered nurse working as a monitor in moderate sedation cases; (6) post-anesthesia care
240 with the patient remaining under anesthesia or with a ;patient in a post-anesthesia state; (7)
241 emergency department overall; (8) emergency critical care, provided that the triage, radio or
242 other specialty registered nurse is not included; (9) emergency trauma; (10) labor and delivery
243 with separate standards for (i) a patient in active labor, (ii) patients, or couplets, in immediate
244 postpartum, and (iii) patients, or couplets, in postpartum; (11) intermediate care nurseries; (12)
245 well-baby nurseries; (13) pediatric units; (14) psychiatric units; (15) medical and surgical; (16)
246 telemetry; (17) observational or out-patient treatment; (18) transitional care; (19) acute inpatient
247 rehabilitation; (20) specialty care unit; and (21) any other units or types of care determined by
248 the department.

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

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

257 Section 224. (a) The department shall develop a patient acuity system, as defined in
258 section 221. The department may also certify patient acuity systems developed or utilized by
259 facilities. Patient acuity systems shall include standardized criteria determined by the
260 department. The patient acuity system shall be used by facilities to: (1) assess the acuity of
261 individual patients and assign a value, within a numerical scale, to each individual patient; (2)
262 establish a methodology for aggregating patient acuity; (3) monitor and address the fluctuating
263 level of acuity of each patient; (4) supplement the nurse's patient assignments and indicate the
264 need for adjustment of direct-care registered nurse staffing as patient acuity changes; and (5)
265 assess the need for health care workforce staff to ensure nurses' focus on the delivery of patient
266 care.

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

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

279 (c) The patient acuity system shall include a method by which facilities may adjust a
280 nurse's patient assignments within the limits determined by the department as follows: (1) a
281 nurse manager or designee shall adjust the patient assignments according to the patient acuity
282 system whenever practicable as determined by need; (2) a nurse manager or designee shall adjust
283 the patient assignments when the department-developed or certified patient acuity system
284 indicates a change in acuity of any particular patient to the extent that it triggers an alert
285 mechanism tied to the aggregate patient acuity; (3) a nurse manager or designee shall be
286 responsible for reassigning patients to comply with the patient acuity system, provided that the
287 nurse manager may rearrange patient assignments within the direct-care registered nurses already
288 under management and may also utilize an available float nurse; (4) at any time, any registered
289 nurse may assess the accuracy of the patient acuity system as applied to a patient in the
290 registered nurse's care.

291 Nothing in this section shall supersede or replace any requirements otherwise mandated
292 by law, regulation or collective bargaining contract so long as the facility meets the requirements
293 determined by the department.

294 Section 225. As a condition of licensing by the department, each facility shall submit
295 annually to the department a prospective staffing plan with a written certification that the staffing
296 plan is sufficient to provide adequate and appropriate delivery of health care services to patients
297 for the ensuing year. A staffing plan shall: (1) incorporate information regarding the number of
298 licensed beds and amount of critical technical equipment associated with each bed in the entire
299 facility; (2) adhere to the nurse's patient assignment standards; (3) employ the department -
300 developed or facility-developed or any alternative patient acuity system developed or utilized by
301 a facility and certified by the department when addressing fluctuations in patient acuity levels
302 that may require adjustments in registered nurse staffing levels as determined by the department;
303 (4) provide for orientation of registered nursing staff to assigned clinical practice areas, including
304 temporary assignments; (5) include other unit or department activity such as discharges, transfers
305 and admissions, and administrative and support tasks that are expected to be done by direct-care
306 registered nurses in addition to direct nursing care; (6) include written reports of the facility's
307 patient aggregate outcome data; (7) incorporate the assessment criteria used to validate the acuity
308 system relied upon in the plan; and (8) include services provided by the health care workforce
309 necessary to the delivery of quality patient care.

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

314 Section 226. (a) A direct-care registered nurse at the beginning of the nurse's shift will
315 be assigned to a certain patient or patients by the nurse manager, who shall use professional

316 judgment in so assigning, provided that the number of patients so assigned shall not exceed the
317 nurse's patient limit associated with the unit.

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

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

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

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

335 Section 227. (a) No facility shall directly assign any unlicensed personnel to perform
336 non-delegable licensed nurse functions to replace care delivered by a licensed registered nurse.
337 Unlicensed personnel are prohibited from performing functions which require the clinical

338 assessment, judgment and skill of a licensed registered nurse. Such functions shall include, but
339 not be limited to: (1) nursing activities which require nursing assessment and judgment during
340 implementation; (2) physical, psychological, and social assessment which requires nursing
341 judgment, intervention, referral or follow-up; (3) formulation of the plan of nursing care and
342 evaluation of the patient's response to the care provided; (4) administration of medications; and
343 (5) health teaching and health counseling.

344 (b) For purposes of compliance with this section, no registered nurse shall be assigned to
345 a unit or a clinical area within a facility unless the registered nurse has an appropriate orientation
346 in the clinical area sufficient to provide competent nursing care and has demonstrated current
347 competency levels through accredited institutions and other continuing education providers.

348 Section 228. (A) If a facility can reasonably demonstrate to the department, with
349 sufficient documentation as determined by the appropriate entity, the attorney general or the
350 division of health care finance and policy, extreme financial hardship as a consequence of
351 meeting the requirements set forth in sections 221 to 229, inclusive, then the facility may apply
352 to the department for a waiver of up to 9 months.

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

357 (C) The department shall enforce paragraphs (1) to (6), inclusive, as follows: (1) If the
358 department determines that there is an apparent pattern of failure by a facility to maintain or
359 adhere to nurse's patient limits in accordance with sections 221 to 228, inclusive, the facility

360 may be subject to an inquiry by the department to determine the causes of the apparent pattern.
361 If, after such inquiry, the department determines that an official investigation is appropriate and
362 after issuance of written notification to the facility, the department may conduct an investigation.
363 Upon completion of the investigation and a finding of noncompliance, the department shall give
364 written notification to the facility as to the manner in which the facility failed to comply with
365 sections 221 to 228, inclusive. Facilities shall be granted due process during the investigation,
366 which shall include the following: (a) notice shall be granted to facilities that are noncompliant
367 with sections 221 to 228, inclusive; (b) facilities shall be afforded the opportunity to submit to
368 the department, through written clarification, justifications for failure to comply with sections
369 221 to 228, inclusive, if so determined by said department, including, but not limited to, patient
370 outcome data and other resources and personnel available to support the registered nurse and
371 patients in the unit, provided however, that facilities shall bear the burden of proof for any and
372 all justifications submitted to the department; (c) based upon such justifications, the department
373 may determine any corrective measures to be taken, if any. Such measures may include: (i) an
374 official notice of failure to comply; (ii) the imposition of additional reporting and monitoring
375 requirements; (iii) revocation of said facility's license or registration; and (iv) the closing of the
376 particular unit that is noncompliant.

377 (2) Failure to comply with limited nurse staffing requirements shall be evidence of
378 noncompliance with this section.

379 (3) Failure to comply with the provisions of this section is actionable.

380 (4) If the department issues an official notice of failure to comply, as set forth in
381 paragraph (1) of subsection (C) and subclause (i) of clause (c) of said paragraph (1) following

382 submission to and adjudication by the department of justifications for failure to comply
383 submitted by a facility pursuant to clause (b) of paragraph (1) of said subsection (C) to a facility
384 found in noncompliance with limits, the facility shall prominently post its notice within each
385 noncompliant unit. Copies of the notice shall be posted by the facility immediately upon receipt
386 and maintained for 14 consecutive days in conspicuous places including all places where notices
387 to employees are customarily posted. The department shall post the notices on its website
388 immediately after a finding of noncompliance. The notice shall remain on the department's
389 website for 14 consecutive days or until such noncompliance is rectified, whichever is longer.

390 (5) If a facility is repeatedly found in noncompliance based on a pattern of failure to
391 comply as determined by the department, the commissioner may fine the facility not more than
392 $3,000 for each finding of noncompliance.

393 (6) Any facility may appeal any measure or fine sought to be enforced by the department
394 hereunder to the division of administrative law appeals and any such measure or fine shall not be
395 enforced by the department until final adjudication by the division.

396 (7) The department may promulgate rules and regulations necessary to enforce this
397 section.

398 Section 229. The department of public health shall provide for (1) an accessible and
399 confidential system to report any failure to comply with requirements of sections 221 to 228,
400 inclusive, and (2) public access to information regarding reports of inspections, results,
401 deficiencies and corrections under said sections 221 to 228, inclusive, unless such information is
402 restricted by law or regulation. Any person who makes such a report shall identify themselves

403 and substantiate the basis for the report; provided, however, that the identity of said person shall
404 be kept confidential by the department.

405 SECTION 7. The department of public health shall include in its regulations pertaining
406 to temporary nursing service agencies, or nursing pools, as defined in section 72Y of chapter 111
407 of the General Laws, and as regulated by the department, parameters in which the department
408 shall deny registration and operation of said agencies only if the agency attempts to increase
409 costs to facilities by at least 10 per cent.

410 SECTION 8. Section 7 is hereby repealed.

411 SECTION 9. The department of public health shall submit 2 written reports on its
412 progress in carrying out this act. Said department shall report to the general court the results of
413 its 2 written reports to the clerks of the house of representatives and the senate who shall forward
414 the same to the president of the senate, the speaker of the house of representatives, the chairs of
415 the joint committee on public health. The first report shall be filed on or before March 1, 2009
416 and the second report shall be filed on or before December 1, 2010.

417 SECTION 10. The department of public health shall initially evaluate the numbers that
418 comprise the nurse's patient assignment standards and nurse's patient limits set forth in sections
419 221 to 228, inclusive of chapter 111 of the General Laws on or before January 1, 2013.

420 SECTION 11. The department of public health, shall develop a comprehensive
421 statewide plan to promote the nursing profession in collaboration with: the executive office of
422 housing and economic development, the board of education, the board of higher education, the
423 board of registration in nursing, the Massachusetts Nurses Association, 1199SEIU, the
424 Massachusetts Hospital Association, Inc., the Massachusetts Organization of Nurse Executives

425 Inc., and any other entity deemed relevant by the department. The plan shall include specific
426 recommendations to increase interest in the nursing profession and increase the supply of
427 registered nurses in the workforce, including recommendations that may be carried out by state
428 agencies. The plan shall be filed with the clerks of the house of representatives and the senate,
429 who shall forward the same to the president of the senate and the speaker of the house of
430 representatives on or before April 15, 2009.

431 SECTION 12. Teaching hospitals, as defined in section 221 of chapter 111 of the
432 General Laws, shall meet the applicable requirements of sections 221 to 229, inclusive of said
433 chapter 111 of the General Laws on or before October 1, 2009. All other facilities, as defined in
434 section 221 of chapter 111 of the General Laws, shall meet the applicable requirements. of
435 sections 221 to 229, inclusive of said chapter 111 of the General Laws no later than October 1,
436 2011.

437 SECTION 13. Section 8 shall take effect on December 1, 2014.

438 SECTION 14. The department of public health shall, on or before January, 1, 2009,
439 promulgate regulations defining criteria and proscribing the process for establishing or
440 certifying by the department a standardized patient acuity system, as defined in section 221 of
441 chapter 111 of the General Laws, developed or utilized by a facility as defined in said section
442 221 of said chapter 111.

443 SECTION 15. The department of public health shall, on or before March 1, 2009,
444 develop a standardized patient acuity system or certify a facility developed or utilized patient
445 acuity systems, as defined in section 221 of chapter 111 of the General Laws, to be utilized by all

446 facilities to monitor the number of direct-care registered nurses needed to meet patient acuity

447 level.

448 SECTION 16. The department of public health shall, on or before June 1, 2009,

449 establish, but not before the development or certification of standardized patient acuity systems,

450 nurse's patient assignment standards and nurse's patient limits as defined in section 221 of

451 chapter 111 of the General Laws.

452 SECTION 17. The department of public health shall, on or before June 1, 2009,

453 promulgate regulations to implement the requirements of section 229 of chapter 111 of the

454 General Laws.