HOUSE DOCKET, NO. 1641 FILED ON: 1/20/2011

HOUSE . . . . . No. 1469

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 adoption of the accompanying bill:

An Act relative to patient safety.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Christine E. Canavan	*10th Plymouth*
Kevin Aguiar	*7th Bristol*
Denise Andrews	*2nd Franklin*
Brian M. Ashe	*2nd Hampden*
Cory Atkins	*14th Middlesex*
Ruth B. Balser	*12th Middlesex*
Carlo Basile	*1st Suffolk*
Jennifer E. Benson	*37th Middlesex*
John J. Binienda	*17th Worcester*
Garrett J. Bradley	*3rd Plymouth*
Michael D. Brady	*9th Plymouth*
Antonio F. D. Cabral	*13th Bristol*
Thomas J. Calter	*12th Plymouth*
Stephen R. Canessa	*12th Bristol*
James M. Cantwell	*4th Plymouth*
Tackey Chan	*2nd Norfolk*
Edward F. Coppinger	*10th Suffolk*
Geraldine M. Creedon	*11th Plymouth*

Sean Curran	*9th Hampden*
Marcos A. Devers	*16th Essex*
James J. Dwyer	*30th Middlesex*
Lori A. Ehrlich	*8th Essex*
Jennifer L. Flanagan	
John P. Fresolo	*16th Worcester*
William C. Galvin	*6th Norfolk*
Sean Garballey	*23rd Middlesex*
Denise C. Garlick	*13th Norfolk*
Anne M. Gobi	*5th Worcester*
Patricia A. Haddad	*5th Bristol*
Patricia D. Jehlen	
Louis L. Kafka	*8th Norfolk*
Timothy R. Madden	*Barnstable, Dukes and Nantucket*
Christopher M. Markey	*9th Bristol*
Paul McMurtry	*11th Norfolk*
Aaron Michlewitz	*3rd Suffolk*
Michael J. Moran	*18th Suffolk*
James M. Murphy	*4th Norfolk*
Rhonda Nyman	*5th Plymouth*
James J. O'Day	*14th Worcester*
Sarah K. Peake	*4th Barnstable*
Vincent A. Pedone	*15th Worcester*
Denise Provost	*27th Middlesex*
Angelo J. Puppolo, Jr.	*12th Hampden*
John H. Rogers	*12th Norfolk*
Richard J. Ross	*Norfolk, Bristol, and Middlesex*
Tom Sannicandro	*7th Middlesex*
John W. Scibak	*2nd Hampshire*
Carl M. Sciortino, Jr.	*34th Middlesex*
Frank I. Smizik	*15th Norfolk*
Joyce A. Spiliotis	*12th Essex*
Ellen Story	*3rd Hampshire*
William M. Straus	*10th Bristol*
David B. Sullivan	*6th Bristol*
Benjamin Swan	*11th Hampden*
James E. Timilty	
Walter F. Timilty	*7th Norfolk*
Timothy J. Toomey, Jr.	*26th Middlesex*

Cleon H. Turner	*1st Barnstable*
Martin J. Walsh	*13th Suffolk*
Steven M. Walsh	*11th Essex*
Alice K. Wolf	*25th Middlesex*
Nick Collins	*4th Suffolk*

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HOUSE . . . . . No. 1469

By Ms. Canavan of Brockton, a petition (accompanied by bill, House, No. 1469) of Christine E. Canavan and others relative to the establishment of a nursing advisory board within the Executive Office of Health and Human Services. Public Health.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. *3912* OF 2009-2010.]

The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

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:

SECTION 1. Chapter 118G of the General laws, as appearing in the 2004 Official Edition, is hereby amended by adding the following new section:-

Section 28:

a. The division shall require hospitals, nursing homes, chronic care and rehabilitation hospitals, other specialty hospitals, clinics, including mental health clinics, all other health care institutions, organizations and corporations licensed or registered by the

department of public health and health maintenance organizations as defined in chapter 176G to annually report appropriate data to the division. This data will be posted and made available to the general public via the internet and include but not be limited to:

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

12 ii. indicators of the nature and amount of nursing care directly provided by licensed
13 nurses including, but not limited to, the actual and the average ratio of registered nurses to
14 patients or residents and the actual and the average skill mix ratio of licensed and supervised
15 unlicensed personnel to patients or residents, and statistics as defined by the National Quality
16 Forum (NQF) and/or the Center for Medicare and Medicaid Services (CMS) on the number of
17 falls, number of incidents of failure to rescue, number of health care acquired infections,
18 including sepsis and pneumonia, and number of medication errors.

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

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

26 b. The division shall consult with interested parties, including but not limited to; the
27 group insurance commission, the Massachusetts nurses association, the Massachusetts health
28 data consortium, the Massachusetts hospital association, the public health council, Massachusetts
29 senior action council, associated industries of Massachusetts, a large labor union, the division of
30 medical assistance, the board of registration in nursing, the division of insurance, the
31 Massachusetts association of health maintenance organizations, and a national council of quality

32 assurance accreditation expert to develop methodologies for collecting and reporting data
33 pursuant to this section and to plan for its use and dissemination to culturally diverse
34 populations.

35 c. Subject to the provisions of section 2(c) of chapter 66A, information collected by the
36 division pursuant to this section shall be made available annually in the form of printed reports
37 and through electronic medium derived from raw data and/or through

38 computer-to-computer access. All personal data shall be maintained with the physical
39 safeguards enumerated in said chapter.

40 SECTION 2. Section 70E of Chapter 111 of the General Laws is hereby amended by
41 striking out in line 89 the word “and”.

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

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

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

49 nursing sensitive outcome data as defined by NQF and/or CMS for statistics including
50 but not limited to, the actual and the average ratio of registered nurses to patients or residents and
51 the actual and the average skill mix ratio of licensed and supervised unlicensed personnel to
52 patients or residents, the number of falls, the number of incidents of failure to rescue, the number

53 of health care acquired infections, including sepsis and pneumonia, and the number of
54 medication errors, and further, upon request, to receive from said duly authorized representative
55 information regarding the educational preparation and length of employment of said facility's
56 nursing staff, as well as information on nurse satisfaction and nurse vacancy rates, and to receive
57 a copy of the comparative nursing care data report as outlined in chapter 118G, section 24
58 subsection (a). The fee for said report shall be determined by the rate of reasonable copying
59 expenses.

60 SECTION 5. Chapter 111 of the General Laws is hereby amended by adding the
61 following 9 sections:—

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

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

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

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

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

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

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

79 “Department”, the department of public health.

80 “Direct-care registered nurse”, a registered nurse who has accepted direct responsibility
81 and

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

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

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

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

94 "Mandatory overtime", any employer request with respect to overtime, which, if refused
95 or declined by the employee, may result in an adverse employment consequence to the
96 employee. The term overtime with respect to an employee means any hours that exceed the
97 predetermined number of hours that the employer and employee have agreed that the employee
98 shall work during the shift or week involved.

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

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

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

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

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

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

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

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

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

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

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

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

136 Section 223. (a) The department shall develop nurse's patient assignment standards
137 which shall be an ideal number of patients assigned to a direct-care registered nurse that will
138 promote equal, high-quality, and safe patient care at all facilities. The standards shall form the
139 basis of nurse staffing plans set forth in section 225. The department shall use, at a minimum, the
140 following information to develop nurse's patient assignment standards for all facilities: (1)
141 Massachusetts specific data, including, but not limited to, the role of registered nurses in the
142 commonwealth by type of unit, the current staffing plans of facilities, the relative experience and
143 education of registered nurses, the variability of facilities, and the needs of the

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

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

156 (c) The department shall develop nurse's patient limits which represent the maximum
157 number of patients to be safely assigned to each direct-care registered nurse at one time on a

158 particular unit. The number of patients assigned to each direct-care registered nurse shall not be
159 averaged and each limit shall pertain to only one direct-care registered nurse. Nurse's patient
160 limits shall not refer to a total number of patients and a total number of direct-care registered
161 nurses on a unit and shall not be factored over a period of time. A facility's failure to adhere to
162 these nurse's patient limits shall result in non-compliance with this section and the facility shall
163 be subject to the enforcement procedures herein and section 228.

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

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

178 (f)Nurse's patient assignment standards and nurse's patient limits shall be determined for
179 the following departments, units or types of nursing care:— intensive care units, (a) critical

180 patient(s) (b) critical unstable patient(s); critical care units, (a) critical patient(s) (b) critical
181 unstable patient(s); neo-natal intensive care (a) critical patient(s) (b) critical unstable patient(s);
182 burn units (a) critical patient(s) (b)critical unstable patient(s); step-down/intermediate care;
183 operating rooms, (a) not to include a registered nurse working as a circulator (b) to be
184 determined for registered nurse working as a monitor in moderate sedation cases; post anesthesia
185 care with the patient remaining under anesthesia; post-anesthesia care with

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

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

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

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

211 (b) The patient acuity system designed by the department or other patient acuity system
212 used by a facility and certified by the department shall be used in determining adjustments in the
213 number of direct-care registered nurses due to the following factors: (1) the need for specialized
214 equipment and technology; (2) the intensity of nursing interventions required and the complexity
215 of clinical nursing judgment needed to design, implement and evaluate the patient's nursing care
216 plan consistent with professional standards of care; (3) the amount of nursing care needed, both
217 in number of direct-care registered nurses and skill mix of members of the health care workforce
218 necessary to the delivery of quality patient care required on a daily basis for each patient in a
219 nursing department or unit, the proximity of patients, the proximity and

220 availability of other resources, and facility design; (4) appropriate terms and language
221 that are readily used and understood by direct-care registered nurses; and (5) patient care services
222 provided by registered nurses and the health care workforce.

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

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

237 Section 225. As a condition of licensing by the department, each facility shall submit
238 annually to the department a prospective staffing plan with a written certification that the staffing
239 plan is sufficient to provide adequate and appropriate delivery of health care services to patients
240 for the ensuing year. A staffing plan shall: (1) incorporate information regarding the number of
241 licensed beds and amount of critical technical equipment associated with each bed in the entire
242 facility; (2) adhere to the nurse's patient assignment standards; (3) employ the department -
243 developed or facility-developed or any alternative patient acuity system developed or utilized by
244 a facility and certified by the department when addressing fluctuations in patient acuity levels
245 that may require adjustments in registered nurse staffing levels as determined by the department;

246 (4) provide for orientation of registered nursing staff to assigned clinical practice areas, including
247 temporary assignments; (5) include other unit or department activity such as discharges, transfers
248 and admissions, and administrative and support tasks that are expected to be

249 done by direct-care registered nurses in addition to direct nursing care; (6) include written
250 reports of the facility's patient aggregate outcome data; (7) incorporate the assessment criteria
251 used to validate the acuity system relied upon in the plan; and (8) include services provided by
252 the health care workforce necessary to the delivery of quality patient care. As a condition of
253 licensing, each facility shall submit annually to the department an audit of the preceding year's
254 staffing plan. The audit shall compare the staffing plan with measurements of actual staffing, as
255 well as measurements of actual acuity for all units within the facility assessed through the patient
256 acuity system.

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

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

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

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

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

278 Section 227. (a) No facility shall directly assign any unlicensed personnel to perform
279 non-delegable licensed nurse functions to replace care delivered by a licensed registered nurse.
280 Unlicensed personnel are prohibited from performing functions which require the clinical
281 assessment, judgment and skill of a licensed registered nurse. Such functions shall include, but
282 not be limited to: (1) nursing activities which require nursing assessment and judgment during
283 implementation; (2) physical, psychological, and social assessment which requires nursing
284 judgment, intervention, referral or follow-up; (3) formulation of the plan of nursing care and
285 evaluation of the patient's response to the care provided; (4) administration of medications; and
286 (5) health teaching and health counseling. (b) For purposes of compliance with this section, no
287 registered nurse shall be assigned to a unit or a clinical area within a facility unless the registered
288 nurse has an appropriate orientation in the clinical area sufficient to provide competent nursing
289 care and has demonstrated current competency levels through

290 accredited institutions and other continuing education providers.

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

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

300 (C) The department shall enforce paragraphs (1) to (6), inclusive, as follows: (1) If the
301 department determines that there is an apparent pattern of failure by a facility to maintain or
302 adhere to nurse's patient limits in accordance with sections 221 to 228, inclusive, the facility
303 may be subject to an inquiry by the department to determine the causes of the apparent pattern.
304 If, after such inquiry, the department determines that an official investigation is appropriate and
305 after issuance of written notification to the facility, the department may conduct an investigation.
306 Upon completion of the investigation and a finding of noncompliance, the department shall give
307 written notification to the facility as to the manner in which the facility failed to comply with
308 sections 221 to 228, inclusive. Facilities shall be granted due process during the investigation,
309 which shall include the following: (a) notice shall be granted to facilities that are

310 noncompliant with sections 221 to 228, inclusive; (b) facilities shall be afforded the
311 opportunity to submit to the department, through written clarification, justifications for failure to

312 comply with sections 221 to 228, inclusive, if so determined by said department, including, but
313 not limited to, patient outcome data and other resources and personnel available to support the
314 registered nurse and patients in the unit, provided however, that facilities shall bear the burden of
315 proof for any and all justifications submitted to the department; (c) based upon such
316 justifications, the department may determine any corrective measures to be taken, if any. Such
317 measures may include: (i) an official notice of failure to comply; (ii) the imposition of additional
318 reporting and monitoring requirements; (iii) revocation of said facility's license or registration;
319 and (iv) the

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

324 failure to comply, as set forth in paragraph (1) of subsection (C) and subclause (i) of
325 clause (c) of said paragraph (1) following submission to and adjudication by the department of
326 justifications for failure to comply submitted by a facility pursuant to clause (b) of paragraph (1)
327 of said subsection (C) to a facility found in noncompliance with limits, the facility shall
328 prominently post its notice within each noncompliant unit. Copies of the notice shall be posted
329 by the facility immediately upon receipt and maintained for 14 consecutive days in conspicuous
330 places including all places where notices to employees are customarily posted. The department
331 shall post the notices on its website immediately after a finding of noncompliance. The notice
332 shall remain on the department’s website for 14 consecutive days or until such noncompliance is
333 rectified, whichever is longer. (5) If a facility is repeatedly found in noncompliance based on a
334 pattern of failure to comply as determined by the department, the commissioner may fine the

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

340 Section 229. The department of public health shall provide for (1) an accessible and
341 confidential system to report any failure to comply with requirements of sections 221 to 228,
342 inclusive, and (2) public access to information regarding reports of inspections, results,
343 deficiencies and corrections under said sections 221 to 228, inclusive, unless such information is
344 restricted by law or regulation. Any person who makes such a report shall identify themselves
345 and substantiate the basis for the report; provided, however, that the identity of said person shall
346 be kept confidential by the department.

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

352 SECTION 7. Section 7 is hereby repealed.

353 SECTION 8. The department of public health shall submit 2 written reports on its
354 progress in carrying out this act. Said department shall report to the general court the results of
355 its 2 written reports to the clerks of the house of representatives and the senate who shall forward
356 the same to the president of the senate, the speaker of the house of representatives, the chairs of

357 the joint committee on public health. The first report shall be filed on or before March 1, 2012
358 and the second report shall be filed on or before December 1, 2013.

359 SECTION 9. The department of public health shall initially evaluate the numbers that
360 comprise the nurse's patient assignment standards and nurse's patient limits set forth in sections
361 221 to 228, inclusive of chapter 111 of the General Laws on or before January 1, 2015.

362 SECTION 10. The department of public health, shall develop a comprehensive statewide
363 plan to promote the nursing profession in collaboration with: the executive office of housing and
364 economic development, the board of education, the board of higher education, the board of
365 registration in nursing, the Massachusetts Nurses Association, 1199SEIU, the Massachusetts
366 Hospital Association, Inc., the Massachusetts Organization of Nurse Executives Inc., and any
367 other entity deemed relevant by the department. The plan shall include specific recommendations
368 to increase interest in the nursing profession and increase the supply of registered nurses in the
369 workforce, including recommendations that may be carried out by state agencies. The plan shall
370 be filed with the clerks of the house of representatives and the

371 senate, who shall forward the same to the president of the senate and the speaker of the
372 house of representatives on or before April 15, 2012.

373 SECTION 11. Teaching hospitals, as defined in section 221 of chapter 111 of the General
374 Laws, shall meet the applicable requirements of sections 221 to 229, inclusive of said chapter
375 111 of the General Laws on or before October 1, 2012. All other facilities, as defined in section
376 221 of chapter 111 of the General Laws, shall meet the applicable requirements of sections 221
377 to 229, inclusive of said chapter 111 of the General Laws no later than October 1, 2012.

378 SECTION 12. Section 8 shall take effect on December 1, 2016.

379 SECTION 13. The department of public health shall, on or before January, 1, 2012,
380 promulgate

381 regulations defining criteria and proscribing the process for establishing or certifying by
382 the department a standardized patient acuity system, as defined in section 221 of chapter 111 of
383 the General Laws, developed or utilized by a facility as defined in said section 221 of said
384 chapter 111.

385 SECTION 14. The department of public health shall, on or before March 1, 2012,
386 develop a standardized patient acuity system or certify a facility developed or utilized patient
387 acuity systems, as defined in section 221 of chapter 111 of the General Laws, to be utilized by all
388 facilities to monitor the number of direct-care registered nurses needed to meet patient acuity
389 level.

390 SECTION 15. The department of public health shall, on or before June 1, 2012, establish,
391 but not before the development or certification of standardized patient acuity systems, nurse's
392 patient assignment standards and nurse's patient limits as defined in section 221 of chapter 111
393 of the General Laws.

394 SECTION 16. The department of public health shall, on or before June 1, 2012,
395 promulgate regulations to implement the requirements of section 229 of chapter 111 of the
396 General Laws.