HOUSE . . . . . No. 4112

The Commonwealth of Massachusetts

INITIATIVE PETITION OF PATRICIA K. DUFFY AND OTHERS.

OFFICE OF THE SECRETARY.

BOSTON, JANUARY 3, 2018.

Steven T. James
Clerk of the House of Representatives
State House
Boston, Massachusetts 02133

Sir: - I herewith transmit to you, in accordance with the requirements of Article XLVIII of the Amendments to the Constitution, an Initiative Petition for a Law Relative To Patient Safety And Hospital Transparency, (Version A) signed by ten qualified voters and filed with this department on or before December 6, 2017, together with additional signatures of qualified voters in the number of 99,089, being a sufficient number to comply with the Provisions of said Article.

Sincerely,

WILLIAM FRANCIS GALVIN,

Secretary of the Commonwealth.

AN INITIATIVE PETITION.

Pursuant to Article XLVIII of the Amendments to the Constitution of the Commonwealth, as amended, the undersigned qualified voters of the Commonwealth, ten in number at least, hereby petition for the enactment into law of the following measure:

FILED ON:

HOUSE . . . . . No. 4112

The Commonwealth of Massachusetts

In the One Hundred and Ninetieth General Court
(2017-2018)

An Act relative to patient safety and hospital transparency.

Be it enacted by the People, and by their authority, as follows:

SECTION 1. SECTIONS 2 through 4 below, along with section 231 of Chapter 111 of the General Laws, shall hereby be known as “The Patient Safety Act.”

SECTION 2. Chapter 111 of the General Laws is hereby amended by adding the following sections after section 231:

Section 231A. Definitions.

As used in sections 231 through 231J the following words shall have the following meanings:

“Patient assignment”, a person admitted to a facility where a registered nurse accepts responsibility for the patient's direct nursing care. A patient must be assigned to a registered nurse at all times.

“Complaint”, any oral or written communication by a patient, medical professional, facility or any of its employees that a facility has violated any term or condition of this act.

“Facility”, a hospital licensed under section 51 of this chapter, the teaching hospital of the University of Massachusetts medical school, any licensed private or state-owned and state-operated general acute care hospital, an acute psychiatric hospital, an acute care specialty hospital, or any acute care unit within a state operated healthcare facility. This definition shall not include rehabilitation facilities or long-term care facilities.

“Health Care Workforce”, personnel employed by or contracted to work at a facility that have an effect upon the delivery of quality care to patients, including but not limited to registered nurses, licensed practical nurses, unlicensed assistive personnel, service, maintenance, clerical, professional and technical workers, and all other health care workers.

"Nursing care", care which falls within the scope of practice as defined in Section 80B of Chapter 112 of the General Laws or is otherwise encompassed within recognized standards of nursing practice, including assessment, nursing diagnosis, planning, intervention, evaluation and patient advocacy.

“Violation”, any failure by a facility to abide by a term or condition of this act.

“Written Implementation Plan”, a written plan detailing both the maximum number of patients to be assigned at all times to a registered nurse in each of the units enumerated in section 231C as well as concurrently detailing the facility’s plans to ensure that it will implement such limits without diminishing the staffing levels of its health care workforce.

Section 231B: Concurrently with establishing and enforcing the maximum patient assignment limits enumerated in Section 231C below, each facility shall submit a written implementation plan to the Massachusetts Health Policy Commission certifying that it will

implement the patient assignment limits without diminishing the staffing levels of its health care workforce.

Section 231C: It is the right of every patient in a facility to nursing care deemed safe by the registered nurse who has accepted responsibility for his or her care. It is the responsibility of each facility to provide the resources necessary to support the safe patient limits enumerated in this section. The maximum number of patients assigned at all times to a registered nurse in a facility shall not exceed the limits enumerated in this section.

Nothing shall preclude a facility from assigning fewer patients to a registered nurse than the limits enumerated in this section; provided, however, that no such assignment shall result in a reduction in the staffing level of the health care workforce assigned to the facility's patients.

The patient assignment limits shall be as follows:

a. In all units with step-down/intermediate care patients, the maximum patient assignment of step-down/intermediate patients is three (3). Step-down/intermediate care patients are those patients that require an intermediate level of care between the intensive care unit and general medical surgical unit.

b. In all units with post anesthesia care (PACU) patients, the maximum patient assignment of PACU patients under anesthesia is one (1). The maximum patient assignment of PACU patients post anesthesia is two (2).

c. In all units with operating room (OR) patients, the maximum patient assignment of OR patients under anesthesia is one (1). The maximum patient assignment of OR patients post anesthesia is two (2).

d. In the Emergency Services Department:

(1) The maximum patient assignment of critical care or intensive care patients is one (1). A registered nurse may accept a second critical care or intensive care patient if that nurse assesses that each patient's condition is stable.

(2) The maximum patient assignment of urgent non-stable patients is two (2). A patient is in an urgent non-stable condition when prompt care of the patient is necessary within fifteen to sixty minutes.

(3) The maximum patient assignment of urgent stable patients is three (3). A patient is in an urgent stable condition when prompt care of the patient is necessary but can wait up to three hours if necessary.

(4) The maximum patient assignment of non-urgent stable patients is five (5). A patient is in a non-urgent stable condition when the patient has a condition or conditions that need attention, but time is not a critical factor.

e. In all units with maternal child care patients:

(1) The maximum patient assignment of active labor patients, patients with intermittent auscultation for fetal assessment, and patients with medical or obstetrical complications is one (1) patient.

(2) The maximum patient assignment during birth and for up to two (2) hours immediately postpartum is one (1) nurse responsible for the mother and, for each baby, one (1) nurse whose sole responsibility is the baby. When the condition of the mother and baby are

determined to be stable and the critical elements are met, one (1) nurse may care for both the mother and the baby(ies).

(3) The maximum patient assignment during the postpartum period for uncomplicated mothers or babies is six (6), which shall be comprised of either six (6) mothers or babies, three (3) couplets of mothers and babies, or, in the case of multiple babies, not more than a total of six (6) patients. As used in this subsection, couplet shall mean one (1) mother and one (1) baby.

(4) The maximum patient assignment of intermediate care or continuing care babies is two (2) babies.

(5) The maximum patient assignment of well-baby patients is six (6) babies.

f. In all units with pediatric patients, the maximum patient assignment of pediatric patients is four (4).

g. In all units with psychiatric patients, the maximum patient assignment of psychiatric patients is five (5).

h. In all units with medical, surgical and telemetry patients, the maximum patient assignment of medical, surgical and telemetry patients is four (4).

i. In all units with observational/outpatient treatment patients, the maximum patient assignment of observational/outpatient treatment patients is four (4).

j. In all units with rehabilitation patients, the maximum patient assignment of rehabilitation patients is five (5).

k. In any unit not otherwise listed, the maximum patient assignment is four (4).

Section 231D: Each facility shall implement the patient assignment limits established by Section 231C. However, implementation of these limits shall not result in a reduction in the staffing levels of the health care workforce.

Section 231E: The Massachusetts Health Policy Commission shall promulgate regulations governing and ensuring the implementation and operation of this act, including but not limited to regulations setting forth the contents and implementation of: (a) certification plans each facility must prepare for implementing the patient assignment limits enumerated in Section 231C, including the facility obligation that implementation of limits shall not result in a reduction in the staffing level of the health care workforce assigned to such patients; and (b) written compliance plans that shall be required for each facility out of compliance with the patient assignment limits. Notwithstanding the terms of this or any other section of this act, the Massachusetts Health Policy Commission shall not promulgate any regulation that directly or indirectly permits any delay, temporary or permanent waiver, or modification of the requirements set forth in sections 231C and 231D above.

Section 231F: Patient Acuity Tool. The patient acuity tool shall serve as an adjunct to the assessment of the registered nurse and shall be designed to promote and support the provision of safe nursing care for the patient(s); however, such tools are not to be utilized as a substitute for the assessment and clinical judgment of the registered nurse assigned to the patients. Each facility shall develop a patient acuity tool for each unit designated in Section 231C. The patient assessment and use of the patient acuity tool shall be performed by the nurse who has accepted the assignment for that patient(s). The patient acuity tool for each unit in a facility shall be

developed by a committee, the majority of which is comprised of staff nurses assigned to the particular unit. The patient acuity tool shall be developed to determine if the maximum number of patients that may be assigned to a registered nurse(s) should be lower than the patient assignment limits specified in Section 231C, in which case that lower number will govern for those patients. The patient acuity tool shall be written so as to be readily used and understood by registered nurses, shall measure the acuity of patients not less frequently than each shift, upon admission of a patient, and upon significant change(s) in a patient's condition and shall consider criteria including but not limited to: (1) the need for specialized equipment and technology; (2) the intensity of nursing interventions required and the complexity of clinical nursing judgment needed to design, implement and evaluate each patient's nursing care plans consistent with professional standards of care; (3) the skill mix of members of the health care workforce necessary for the delivery of quality care for each patient; and (4) the proximity of patients to one another who are assigned to the same nurse, the proximity and availability of other healthcare resources, and facility design. A facility's patient acuity tool shall, prior to implementation, be certified by the Massachusetts Health Policy Commission as meeting the above criteria, and the Commission may issue regulations governing such tools, including their content and implementation. Such patient acuity tool and information contained and documented therein shall be part of the patient medical record.

Section 231G: This act shall not be construed to impair any collective bargaining agreement or any other contract in effect as of the effective date of this act, but shall have full force and effect upon the earliest expiration date of any such collective bargaining agreement or other contract. Nothing in this act shall prevent the validity or enforcement of terms in a collective bargaining agreement or other contract that provides for a lower number of patients

assigned to a nurse than the number mandated by the patient assignment limits set forth in this act.

Section 231H: Enforcement. The Massachusetts Health Policy Commission may conduct inspections of facilities to ensure compliance with the terms of this act. A facility's failure to adhere to the patient assignment limits set forth in Section 231C, as adjusted per the requirements set forth in Sections 231D and 231F, shall be reported by the Massachusetts Health Policy Commission to the Attorney General for enforcement. The Attorney General may bring a Superior Court action seeking injunctive relief and civil penalties in the amount of up to twenty-five thousand dollars per violation. A separate and distinct violation, for which the facility shall be subject to a civil penalty of up to twenty five thousand dollars, shall be deemed to have been committed on each day during which a violation continues following notice to the facility. Upon written notice by the Health Policy Commission that a complaint has been made or a violation has occurred, a facility receiving such notice shall submit a written compliance plan to the Commission that demonstrates the manner in which the facility will ensure future compliance with all of the provisions of this act within the time frame required by the Commission. No employee shall be disciplined or retaliated against in any manner for complying with the patient limits set forth in section 231C above, and any such employee so disciplined or retaliated against shall be entitled to the remedies provided in section 185(d) of chapter 149 regardless of whether the employee satisfies any other terms or conditions set forth in section 185 of chapter 149. The requirements of this act, and its enforcement, shall be suspended during a state or nationally declared public health emergency.

Section 231I: Every facility shall post in a conspicuous place or places on its premises, including within each unit, patient room, and waiting areas, a notice to be prepared or approved

by the Massachusetts Health Policy Commission that is easily readable in lay terms in English and in other languages determined by the commission setting forth excerpts of this act, including all of the patient assignment limits set forth in Section 231C, along with the manner in which to report violations and such other relevant information which the commission deems necessary to explain the requirements of this act. Any facility subject to this act which refuses to comply with the provisions of this section shall be punished by a civil penalty of not less than two hundred and fifty dollars and not more than two thousand five hundred dollars for each day the facility is not in compliance. The provisions of this section shall be enforced by the Attorney General.

Section 231J: The Massachusetts Health Policy Commission shall establish a toll-free telephone number where complaints against facilities can be reported, and a public website where complaints, certification and compliance plans, and violations shall appear and be updated at least quarterly for each facility. The toll-free telephone number and website location shall be included in all notices prepared and posted pursuant to Section 231I above.

SECTION 2: Severability. The provisions of this act are severable, such that, if any clause, sentence, paragraph or section, or an application thereof, shall be adjudged by any court of competent jurisdiction to be invalid, such adjudication shall not affect, impair, or invalidate the remainder of any clause, sentence, paragraph or section thereof and shall be confined in its operation to such clause, sentence, paragraph, section or application adjudged invalid; provided further, that any such clause, sentence, paragraph, section or application deemed invalid shall be reformed and construed such that it would be valid to the maximum extent permitted.

SECTION 3: This act shall take effect on January 1, 2019.

FIRST TEN SIGNERS

NAME	RESIDENCE	CITY OR TOWN
Patricia K. Duffy	89 Calypso Lane	Marshfield
Mary H. Crotty	7 Western Avenue	Hull
Mary S. Howlett	255 Stevens Street	North Andover
Lynne P. Starbard	28 Dellwood Road	Worcester
Abigail P. Howlett	255 Stevens Street	North Andover
Elizabeth J. Sparks	84 Codman Road	Norwood
Ann McDonagh	10 Sunnybrook Lane	Canton
Karen Ann Higgins	85 Keith Street	Weymouth
Charlene L. Richardson	3 Crossrip Avenue	Peabody
Lisa M. Field	46 Soule Street	Middleborough

CERTIFICATE OF THE ATTORNEY GENERAL.

September 6, 2017.

Honorable William Francis Galvin
Secretary of the Commonwealth
One Ashburton Place, Room 1705
Boston, Massachusetts 02108

RE: Initiative Petition No. 17-07: Initiative Petition for a Law Relative To Patient Safety And Hospital Transparency.

Dear Secretary Galvin:

I accordance with the provisions of Article 48 of the Amendments to the Massachusetts Constitution, I have reviewed the above-referenced initiative petition, which was submitted to me on or before the first Wednesday of August of this year.

I hereby certify that this measure is in proper form for submission to the people; that the measure is not, either affirmatively or negatively, substantially the same as any measure which has been qualified for submission or submitted to the people at either of the two preceding biennial state elections; and that it contains only subjects that are related or are mutually dependent and which are not excluded from the initiative process pursuant to Article 48, the Initiative, Part 2, Section 2.

In accordance with Article 48, I enclose a fair, concise summary of the measure.

Sincerely,

MAURA HEALEY,
Attorney General.

This proposed law would limit how many patients could be assigned to each registered nurse in Massachusetts hospitals and certain other health care facilities. The maximum number of patients per registered nurse would vary by type of unit and level of care, as follows:

- In units with step-down/intermediate care patients: 3 patients per nurse;
- In units with post-anesthesia care or operating room patients: 1 patient under anesthesia per nurse; 2 patients post-anesthesia per nurse;
- In the emergency services department: 1 critical or intensive care patient per nurse (or 2 if the nurse has assessed each patient's condition as stable); 2 urgent non-stable patients per nurse; 3 urgent stable patients per nurse; or 5 non-urgent stable patients per nurse;
- In units with maternity patients: (a) active labor patients: 1 patient per nurse; (b) during birth and for up to two hours immediately postpartum: 1 mother per nurse and 1 baby per nurse; (c) when the condition of the mother and baby are determined to be stable: 1 mother and her baby or babies per nurse; (d) postpartum: 6 patients per nurse; (e) intermediate care or continuing care babies: 2 babies per nurse; (f) well-babies: 6 babies per nurse;
- In units with pediatric, medical, surgical, telemetry, or observational/outpatient treatment patients, or any other unit: 4 patients per nurse; and
- In units with psychiatric or rehabilitation patients: 5 patients per nurse.

The proposed law would require a covered facility to comply with the patient assignment limits without reducing its level of nursing, service, maintenance, clerical, professional, and other staff.

The proposed law would also require every covered facility to develop a written patient acuity tool for each unit to evaluate the condition of each patient. This tool would be used by nurses in deciding whether patient limits should be lower than the limits of the proposed law at any given time.

The proposed law would not override any contract in effect on January 1, 2019 that set higher patient limits. The proposed law's limits would take effect after any such contract expired.

The state Health Policy Commission would be required to promulgate regulations to implement the proposed law. The Commission could conduct inspections to ensure compliance with the law. Any facility receiving written notice from the Commission of a complaint or a violation would be required to submit a written compliance plan to the Commission. The Commission could report violations to the state Attorney General, who could file suit to obtain a civil penalty of up to $25,000 per violation as well as up to $25,000 for each day a violation continued after the Commission notified the covered facility of the violation. The Health Policy Commission would be required to establish a toll-free telephone number for complaints and a website where complaints, compliance plans, and violations would appear.

The proposed law would prohibit discipline or retaliation against any employee for complying with the patient assignment limits of the law. The proposed law would require every covered facility to post within each unit,

patient room, and waiting area a notice explaining the patient limits and how to report violations. Each day of a facility's non-compliance with the posting requirement would be punishable by a civil penalty between $250 and $2,500.

The proposed law's requirements would be suspended during a state or nationally declared public health emergency.

The proposed law states that, if any of its parts were declared invalid, the other parts would stay in effect. The proposed law would take effect on January 1, 2019.