

**SENATE . . . . . No. 890**

**The Commonwealth of Massachusetts**

PRESENTED BY:

**Marc R. Pacheco**

*To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:*

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act relative to patient safety.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Marc R. Pacheco	First Plymouth and Bristol
James B. Eldridge	Middlesex and Worcester
Anthony D. Galluccio	Middlesex, Suffolk and Essex
Michael O. Moore	Second Worcester
Jennifer L. Flanagan	Worcester and Middlesex
James E. Timilty	Bristol and Norfolk
Sonia Chang-Díaz	Second Suffolk
John A. Hart, Jr.	First Suffolk
Barbara A. L'Italien	18th Essex
Marian Walsh	Suffolk and Norfolk
Thomas P. Kennedy	Second Plymouth and Bristol
Kenneth J. Donnelly	Fourth Middlesex
Christine E. Canavan	10th Plymouth
Bruce E. Tarr	First Essex and Middlesex

# The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

## AN ACT RELATIVE TO PATIENT SAFETY.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1 SECTION 1. Chapter 6A of the General Laws is hereby amended by inserting after section 16G the  
2 following section:—

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

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

30 SECTION 2. Section 14 of chapter 13 of the General Laws, as appearing in the 2006 Official Edition, is  
31 hereby amended by striking out, in line 35, the word “and”, -- and by inserting after the word “nursing”,  
32 in line 37, the following:- ; and (l) establish an expert nursing corps, to be known as the Clara Barton  
33 Expert Nursing Corps, which shall consist of recognized nurses of high achievement in the profession  
34 who shall mentor incoming or novice nurses and further the goals of the nursing profession; provided  
35 however, that the board shall adopt guidelines governing the implementation of the program; provided  
36 further, that such guidelines shall include, but not be limited to, the following provisions: specialty,  
37 standing, experience, and successful efforts to enable the nursing profession.

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

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

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

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

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

62 Section 19H. The board shall establish the Clara Barton Scholarship Program to provide students in  
63 approved Massachusetts colleges, universities and schools of nursing with scholarships for tuition and  
64 fees for the purpose of encouraging outstanding Massachusetts students to work as nurses in, but not  
65 limited to, acute care hospitals, psychiatric and mental health clinics or hospitals, community or  
66 neighborhood health centers, rehabilitation centers, nursing homes, or as a home health, school or public  
67 health nurses in the commonwealth, or to teach nursing in colleges, universities, or schools of nursing in  
68 the commonwealth. The board of higher education shall adopt guidelines governing the implementation  
69 of the Clara Barton Scholarship Program. Colleges, universities, and schools of nursing in the  
70 commonwealth may administer the Clara Barton Scholarship Program and select recipients in accordance  
71 with guidelines adopted by the board. Scholarships may be made available to full or part time  
72 matriculating students in courses of study leading to a degree in nursing or the teaching of nursing. The  
73 criteria of the recipients and the amount of the scholarships shall be determined by the board of higher  
74 education.

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

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

82 Section 19K. The board shall develop a program to increase the racial and ethnic diversity of the nursing  
83 workforce. The program shall focus on the identification, recruitment and retention of nursing students  
84 from populations underrepresented in the health care professions and shall pay special attention to  
85 economic, social, and educational barriers for the diversification of the nursing workforce.

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

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

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

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

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

106 “Adjustment of standards”, the adjustment of nurse’s patient assignment standards in accordance with  
107 patient acuity according to, or in addition to, direct-care registered nurse staffing levels determined by the  
108 nurse manager, or his designee, using the patient acuity system developed by the department and any  
109 alternative patient acuity system utilized by hospitals, if said system is certified by the department.

110 “Acuity”, the intensity of nursing care required to meet the needs of a patient; higher acuity usually  
111 requires longer and more frequent nurse visits and more supplies and equipment.

112 “Assignment”, the provision of care to a particular patient for which a direct-care registered nurse has  
113 responsibility within the scope of the nurse’s practice, notwithstanding any general or special law to the  
114 contrary.

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

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

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

119 “Department”, the department of public health.

120 “Direct-care registered nurse”, a registered nurse who has accepted direct responsibility and  
121 accountability to carry out medical regimens, nursing or other bedside care for patients.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

165 Section 222. The department shall reevaluate the numbers that comprise the nurse's patient assignment  
166 standards and nurse's patient limits and the patient acuity system in the evaluation period and then every  
167 3 years thereafter, taking into consideration evolving technology or changing treatment protocols and care  
168 practices and other relevant clinical factors.

169 Section 223. (a) The department shall develop nurse's patient assignment standards which shall be an  
170 ideal number of patients assigned to a direct-care registered nurse that will promote equal, high-quality,  
171 and safe patient care at all facilities. The standards shall form the basis of nurse staffing plans set forth in  
172 section 225. The department shall use, at a minimum, the following information to develop nurse's  
173 patient assignment standards for all facilities: (1) Massachusetts specific data, including, but not limited  
174 to, the role of registered nurses in the commonwealth by type of unit, the current staffing plans of  
175 facilities, the relative experience and education of registered nurses, the variability of facilities, and the  
176 needs of the patient population; (2) fluctuating patient acuity levels; (3) variations among facilities and  
177 patient care units; (4) scientific data related to patient outcomes, a rigorous analysis of clinical data  
178 related to patient outcomes and valid nationally recognized scientific evidence on patient care, facility  
179 medical error rates, and health care quality measures; (5) availability of technology; (6) treatment  
180 modalities within behavioral health facilities; and (7) public testimony from both the public and experts  
181 within the field.

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

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

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

202 (e) The setting of nurse's patient assignment standards and nurse's patient limits for registered nurses  
203 shall not result in the understaffing or reductions in staffing levels of the health care workforce. The

204 availability of the health care workforce enables registered nurses to focus on the nursing care functions  
205 that only registered nurses, by law, are permitted to perform and thereby helps to ensure adequate staffing  
206 levels.

207 (f) Nurse's patient assignment standards and nurse's patient limits shall be determined for the following  
208 departments, units or types of nursing care:— intensive care units, (a) critical patient(s) (b) critical  
209 unstable patient(s); critical care units, (a) critical patient(s) (b) critical unstable patient(s); neo-natal  
210 intensive care (a) critical patient(s) (b) critical unstable patient(s); burn units (a) critical patient(s) (b)  
211 critical unstable patient(s); step-down/intermediate care; operating rooms, (a) not to include a registered  
212 nurse working as a circulator (b) to be determined for registered nurse working as a monitor in moderate  
213 sedation cases; post anesthesia care with the patient remaining under anesthesia; post-anesthesia care with  
214 the patient in a post-anesthesia state; emergency department overall; emergency critical care, provided  
215 that the triage, radio or other specialty registered nurse is not included; emergency trauma; labor and  
216 delivery with separate standards for (i) a patient in active labor, (ii) patients, or couplets, in immediate  
217 postpartum, and (iii) patients, or couplets, in postpartum; intermediate care nurseries; well-baby nurseries;  
218 pediatric units; psychiatric units; medical and surgical; telemetry; observational/out-patient treatment;  
219 transitional care; acute inpatient rehabilitation; specialty care unit; and any other units or types of care  
220 determined necessary by the department.

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

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

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

235 (b) The patient acuity system designed by the department or other patient acuity system used by a facility  
236 and certified by the department shall be used in determining adjustments in the number of direct-care  
237 registered nurses due to the following factors: (1) the need for specialized equipment and technology; (2)  
238 the intensity of nursing interventions required and the complexity of clinical nursing judgment needed to  
239 design, implement and evaluate the patient's nursing care plan consistent with professional standards of  
240 care; (3) the amount of nursing care needed, both in number of direct-care registered nurses and skill mix  
241 of members of the health care workforce necessary to the delivery of quality patient care required on a  
242 daily basis for each patient in a nursing department or unit, the proximity of patients, the proximity and  
243 availability of other resources, and facility design; (4) appropriate terms and language that are readily

244 used and understood by direct-care registered nurses; and (5) patient care services provided by registered  
245 nurses and the health care workforce.

246 (c) The patient acuity system shall include a method by which facilities may adjust a nurse's patient  
247 assignments within the limits determined by the department as follows: (1) a nurse manager or designee  
248 shall adjust the patient assignments according to the patient acuity system whenever practicable as  
249 determined by need; (2) a nurse manager or designee shall adjust the patient assignments when the  
250 department-developed or certified patient acuity system indicates a change in acuity of any particular  
251 patient to the extent that it triggers an alert mechanism tied to the aggregate patient acuity; (3) a nurse  
252 manager or designee shall be responsible for reassigning patients to comply with the patient acuity  
253 system, provided that the nurse manager may rearrange patient assignments within the direct-care  
254 registered nurses already under management and may also utilize an available float nurse; (4) at any time,  
255 any registered nurse may assess the accuracy of the patient acuity system as applied to a patient in the  
256 registered nurse's care. Nothing in this section shall supersede or replace any requirements otherwise  
257 mandated by law, regulation or collective bargaining contract so long as the facility meets the  
258 requirements determined by the department.

259 Section 225. As a condition of licensing by the department, each facility shall submit annually to the  
260 department a prospective staffing plan with a written certification that the staffing plan is sufficient to  
261 provide adequate and appropriate delivery of health care services to patients for the ensuing year. A  
262 staffing plan shall: (1) incorporate information regarding the number of licensed beds and amount of  
263 critical technical equipment associated with each bed in the entire facility; (2) adhere to the nurse's  
264 patient assignment standards; (3) employ the department -developed or facility-developed or any  
265 alternative patient acuity system developed or utilized by a facility and certified by the department when  
266 addressing fluctuations in patient acuity levels that may require adjustments in registered nurse staffing  
267 levels as determined by the department; (4) provide for orientation of registered nursing staff to assigned  
268 clinical practice areas, including temporary assignments; (5) include other unit or department activity  
269 such as discharges, transfers and admissions, and administrative and support tasks that are expected to be  
270 done by direct-care registered nurses in addition to direct nursing care; (6) include written reports of the  
271 facility's patient aggregate outcome data; (7) incorporate the assessment criteria used to validate the  
272 acuity system relied upon in the plan; and (8) include services provided by the health care workforce  
273 necessary to the delivery of quality patient care. As a condition of licensing, each facility shall submit  
274 annually to the department an audit of the preceding year's staffing plan. The audit shall compare the  
275 staffing plan with measurements of actual staffing, as well as measurements of actual acuity for all units  
276 within the facility assessed through the patient acuity system.

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

281 (b) An unassigned registered nurse may be included in the counting of the nurse to patient assignment  
282 standards only when that unassigned registered nurse is providing direct care. When an unassigned  
283 registered nurse is engaged in activities other than direct patient care, that nurse shall not be included in

284 the counting of the nurse to patient assignments. Only an unassigned registered nurse, who has  
285 demonstrated current competence to the facility to provide the level of care specific to the unit to which  
286 the patient is admitted, may relieve a direct-care registered nurse from said unit during breaks, meals, and  
287 other routine and expected absences.

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

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

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

297 Section 227. (a) No facility shall directly assign any unlicensed personnel to perform non-delegable  
298 licensed nurse functions to replace care delivered by a licensed registered nurse. Unlicensed personnel are  
299 prohibited from performing functions which require the clinical assessment, judgment and skill of a  
300 licensed registered nurse. Such functions shall include, but not be limited to: (1) nursing activities which  
301 require nursing assessment and judgment during implementation; (2) physical, psychological, and social  
302 assessment which requires nursing judgment, intervention, referral or follow-up; (3) formulation of the  
303 plan of nursing care and evaluation of the patient's response to the care provided; (4) administration of  
304 medications; and (5) health teaching and health counseling.

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

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

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

316 (C) The department shall enforce paragraphs (1) to (6), inclusive, as follows: (1) If the department  
317 determines that there is an apparent pattern of failure by a facility to maintain or adhere to nurse's patient  
318 limits in accordance with sections 221 to 228, inclusive, the facility may be subject to an inquiry by the  
319 department to determine the causes of the apparent pattern. If, after such inquiry, the department

320 determines that an official investigation is appropriate and after issuance of written notification to the  
321 facility, the department may conduct an investigation. Upon completion of the investigation and a finding  
322 of noncompliance, the department shall give written notification to the facility as to the manner in which  
323 the facility failed to comply with sections 221 to 228, inclusive. Facilities shall be granted due process  
324 during the investigation, which shall include the following: (a) notice shall be granted to facilities that are  
325 noncompliant with sections 221 to 228, inclusive; (b) facilities shall be afforded the opportunity to submit  
326 to the department, through written clarification, justifications for failure to comply with sections 221 to  
327 228, inclusive, if so determined by said department, including, but not limited to, patient outcome data  
328 and other resources and personnel available to support the registered nurse and patients in the unit,  
329 provided however, that facilities shall bear the burden of proof for any and all justifications submitted to  
330 the department; (c) based upon such justifications, the department may determine any corrective measures  
331 to be taken, if any. Such measures may include: (i) an official notice of failure to comply; (ii) the  
332 imposition of additional reporting and monitoring requirements; (iii) revocation of said facility's license  
333 or registration; and (iv) the closing of the particular unit that is noncompliant. (2) Failure to comply with  
334 limited nurse staffing requirements shall be evidence of noncompliance with this section. (3) Failure to  
335 comply with the provisions of this section is actionable. (4) If the department issues an official notice of  
336 failure to comply, as set forth in paragraph (1) of subsection (C) and subclause (i) of clause (c) of said  
337 paragraph (1) following submission to and adjudication by the department of justifications for failure to  
338 comply submitted by a facility pursuant to clause (b) of paragraph (1) of said subsection (C) to a facility  
339 found in noncompliance with limits, the facility shall prominently post its notice within each  
340 noncompliant unit. Copies of the notice shall be posted by the facility immediately upon receipt and  
341 maintained for 14 consecutive days in conspicuous places including all places where notices to employees  
342 are customarily posted. The department shall post the notices on its website immediately after a finding of  
343 noncompliance. The notice shall remain on the department's website for 14 consecutive days or until such  
344 noncompliance is rectified, whichever is longer. (5) If a facility is repeatedly found in noncompliance  
345 based on a pattern of failure to comply as determined by the department, the commissioner may fine the  
346 facility not more than \$3,000 for each finding of noncompliance. (6) Any facility may appeal any measure  
347 or fine sought to be enforced by the department hereunder to the division of administrative law appeals  
348 and any such measure or fine shall not be enforced by the department until final adjudication by the  
349 division. (7) The department may promulgate rules and regulations necessary to enforce this section.

350 Section 229. The department of public health shall provide for (1) an accessible and confidential system  
351 to report any failure to comply with requirements of sections 221 to 228, inclusive, and (2) public access  
352 to information regarding reports of inspections, results, deficiencies and corrections under said sections  
353 221 to 228, inclusive, unless such information is restricted by law or regulation. Any person who makes  
354 such a report shall identify themselves and substantiate the basis for the report; provided, however, that  
355 the identity of said person shall be kept confidential by the department.

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

360 SECTION 8. Section 7 is hereby repealed.

361 SECTION 9. The department of public health shall submit 2 written reports on its progress in carrying out  
362 this act. Said department shall report to the general court the results of its 2 written reports to the clerks of  
363 the house of representatives and the senate who shall forward the same to the president of the senate, the  
364 speaker of the house of representatives, the chairs of the joint committee on public health. The first report  
365 shall be filed on or before March 1, 2010 and the second report shall be filed on or before December 1,  
366 2011.

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

370 SECTION 11. The department of public health, shall develop a comprehensive statewide plan to promote  
371 the nursing profession in collaboration with: the executive office of housing and economic development,  
372 the board of education, the board of higher education, the board of registration in nursing, the  
373 Massachusetts Nurses Association, 1199SEIU, the Massachusetts Hospital Association, Inc., the  
374 Massachusetts Organization of Nurse Executives Inc., and any other entity deemed relevant by the  
375 department. The plan shall include specific recommendations to increase interest in the nursing profession  
376 and increase the supply of registered nurses in the workforce, including recommendations that may be  
377 carried out by state agencies. The plan shall be filed with the clerks of the house of representatives and the  
378 senate, who shall forward the same to the president of the senate and the speaker of the house of  
379 representatives on or before April 15, 2010.

380 SECTION 12. Teaching hospitals, as defined in section 221 of chapter 111 of the General Laws, shall  
381 meet the applicable requirements of sections 221 to 229, inclusive of said chapter 111 of the General  
382 Laws on or before October 1, 2010. All other facilities, as defined in section 221 of chapter 111 of the  
383 General Laws, shall meet the applicable requirements. of sections 221 to 229, inclusive of said chapter  
384 111 of the General Laws no later than October 1, 2012.

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

386 SECTION 14. The department of public health shall, on or before January, 1, 2010, promulgate  
387 regulations defining criteria and proscribing the process for establishing or certifying by the department a  
388 standardized patient acuity system, as defined in section 221 of chapter 111 of the General Laws,  
389 developed or utilized by a facility as defined in said section 221 of said chapter 111.

390 SECTION 15. The department of public health shall, on or before March 1, 2010, develop a standardized  
391 patient acuity system or certify a facility developed or utilized patient acuity systems, as defined in  
392 section 221 of chapter 111 of the General Laws, to be utilized by all facilities to monitor the number of  
393 direct-care registered nurses needed to meet patient acuity level.

394 SECTION 16. The department of public health shall, on or before June 1, 2010, establish, but not before  
395 the development or certification of standardized patient acuity systems, nurse's patient assignment  
396 standards and nurse's patient limits as defined in section 221 of chapter 111 of the General Laws.

397 SECTION 17. The department of public health shall, on or before June 1, 2010, promulgate regulations  
398 to implement the requirements of section 229 of chapter 111 of the General Laws.