

HOUSE BILL No. 5013

October 21, 2015, Introduced by Reps. Hoadley, Plawecki, McBroom, Moss, Geiss, Inman, Hovey-Wright, Sarah Roberts, Lane, Chirkun, Faris, Chang, Talabi, Garrett, Love, Brunner, Smiley, Cochran, Robinson, Darany, Singh, Kivela, Irwin, Pagan, Greig, Santana, Dianda, Zemke, LaVoy, Phelps, Schor and Kosowski and referred to the Committee on Regulatory Reform.

A bill to amend 1978 PA 368, entitled
"Public health code,"
(MCL 333.1101 to 333.25211) by adding section 21525.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 SEC. 21525. (1) A HOSPITAL SHALL PROVIDE SUFFICIENT AND
2 QUALIFIED REGISTERED PROFESSIONAL NURSING STAFF AT ALL TIMES TO
3 ENSURE PATIENT SAFETY.

4 (2) NOT LATER THAN 3 YEARS AFTER THE EFFECTIVE DATE OF THE
5 AMENDATORY ACT THAT ADDED THIS SECTION, OR NOT LATER THAN 4 YEARS
6 IF A HOSPITAL IS LOCATED IN A RURAL AREA, A HOSPITAL SHALL DEVELOP
7 AND IMPLEMENT A STAFFING PLAN AS PROVIDED UNDER THIS SECTION.
8 WITHIN THE APPLICABLE TIME PERIOD PRESCRIBED IN THIS SUBSECTION AND

1 ANNUALLY AFTER THAT, A HOSPITAL SHALL SUBMIT ITS STAFFING PLAN TO
2 THE DEPARTMENT.

3 (3) TO ASSIST IN THE DEVELOPMENT OF A STAFFING PLAN, A
4 HOSPITAL SHALL ESTABLISH A STAFFING COMMITTEE FOR EACH UNIT WITHIN
5 THE HOSPITAL AND NOT LESS THAN 1/2 OF THE MEMBERS MUST BE
6 REGISTERED PROFESSIONAL NURSES WHO ARE DIRECT CARE PROVIDERS IN
7 THAT UNIT. IF THE NURSES IN THE HOSPITAL ARE UNDER A COLLECTIVE
8 BARGAINING AGREEMENT, THE COLLECTIVE BARGAINING REPRESENTATIVE
9 SHALL DESIGNATE THE NURSES FROM WITHIN EACH UNIT TO SERVE ON THE
10 STAFFING COMMITTEE FOR THAT UNIT. PARTICIPATION ON THE STAFFING
11 COMMITTEE IS CONSIDERED PART OF THE NURSE'S REGULARLY SCHEDULED
12 WORKWEEK. A HOSPITAL SHALL NOT RETALIATE AGAINST A NURSE WHO
13 PARTICIPATES ON THE STAFFING COMMITTEE. THE STAFFING COMMITTEE
14 SHALL ESTABLISH A STAFFING STRATEGY FOR THAT UNIT IF THE PATIENTS'
15 NEEDS WITHIN THAT UNIT FOR A SHIFT EXCEED THE REQUIRED MINIMUM
16 DIRECT CARE REGISTERED PROFESSIONAL NURSE-TO-PATIENT RATIOS SET
17 FORTH IN SUBSECTION (4).

18 (4) A HOSPITAL'S STAFFING PLAN MUST NOT ASSIGN MORE PATIENTS
19 PER DIRECT CARE REGISTERED PROFESSIONAL NURSE THAN INDICATED BY THE
20 FOLLOWING DIRECT CARE REGISTERED PROFESSIONAL NURSE-TO-PATIENT
21 RATIOS FOR EACH OF THE CORRESPONDING UNITS:

22 (i) INTENSIVE/CRITICAL CARE: 1 TO 1.

23 (ii) OPERATING ROOM: 1 TO 1, IF NOT LESS THAN 1 ADDITIONAL
24 INDIVIDUAL SERVES AS A SCRUB ASSISTANT IN THE UNIT.

25 (iii) LABOR AND DELIVERY:

26 (A) DURING SECOND AND THIRD STAGES OF LABOR: 1 TO 1.

27 (B) DURING FIRST STAGE OF LABOR: 1 TO 2.

(C) INTERMEDIATE CARE NEWBORN NURSERY: 1 TO 3.

(D) NONCRITICAL ANTEPARTUM PATIENTS: 1 TO 4.

(E) POSTPARTUM MOTHER BABY COUPLET: 1 TO 3.

(F) POSTPARTUM MOTHER OR WELL-BABY CARE: 1 TO 6.

(iv) POSTANESTHESIA CARE UNIT: 1 TO 2.

(v) EMERGENCY DEPARTMENT:

(A) NONTRAUMA OR NONCRITICAL CARE: 1 TO 3.

(B) TRAUMA OR CRITICAL CARE: 1 TO 1.

(C) PLUS 1 R.N. FOR TRIAGE.

(vi) STEPDOWN: 1 TO 3.

(vii) TELEMETRY: 1 TO 3.

(viii) MEDICAL/SURGICAL: 1 TO 4.

(ix) PEDIATRICS: 1 TO 4.

(x) BEHAVIORAL HEALTH: 1 TO 4.

(xi) REHABILITATION CARE: 1 TO 5.

(5) IF A UNIT THAT IS NOT LISTED IN SUBSECTION (4) PROVIDES A LEVEL OF CARE TO PATIENTS WHOSE NEEDS ARE SIMILAR TO THE NEEDS OF PATIENTS CARED FOR IN A UNIT THAT IS LISTED IN SUBSECTION (4), A HOSPITAL SHALL APPLY THE MINIMUM DIRECT CARE REGISTERED PROFESSIONAL NURSE-TO-PATIENT RATIO FOR THE UNIT THAT IS LISTED IN SUBSECTION (4) TO THE UNIT THAT IS NOT LISTED.

(6) THE MINIMUM DIRECT CARE REGISTERED PROFESSIONAL NURSE-TO-PATIENT RATIOS REQUIRED UNDER SUBSECTION (4) MUST BE IN EFFECT AT ALL TIMES, INCLUDING DURING BREAKS, MEALS, AND OTHER ROUTINE, EXPECTED ABSENCES FROM A UNIT.

(7) A HOSPITAL SHALL NOT DO ANY OF THE FOLLOWING:

(A) IN COMPUTING THE MINIMUM DIRECT CARE REGISTERED

1 PROFESSIONAL NURSE-TO-PATIENT RATIO REQUIRED UNDER SUBSECTION (4),
2 INCLUDE A REGISTERED PROFESSIONAL NURSE WHO IS NOT ASSIGNED TO
3 PROVIDE DIRECT PATIENT CARE IN THAT UNIT OR WHO IS NOT ORIENTED,
4 QUALIFIED, AND COMPETENT TO PROVIDE SAFE PATIENT CARE IN THAT UNIT.

5 (B) AVERAGE THE NUMBER OF PATIENTS AND THE TOTAL NUMBER OF
6 DIRECT CARE REGISTERED PROFESSIONAL NURSES ASSIGNED TO PATIENTS IN
7 A UNIT DURING 1 SHIFT OR OVER A PERIOD OF TIME TO MEET THE MINIMUM
8 DIRECT CARE REGISTERED NURSE-TO-PATIENT RATIOS REQUIRED UNDER
9 SUBSECTION (4).

10 (C) EXCEPT IN AN UNFORESEEN EMERGENT SITUATION, IMPOSE
11 MANDATORY OVERTIME TO MEET THE MINIMUM DIRECT CARE REGISTERED
12 PROFESSIONAL NURSE-TO-PATIENT RATIOS REQUIRED UNDER SUBSECTION (4).

13 (8) DURING A SHIFT, A HOSPITAL MAY DECREASE THE NUMBER OF
14 PATIENTS PER DIRECT CARE REGISTERED PROFESSIONAL NURSE BELOW WHAT
15 IS INDICATED IN THE RATIO REQUIRED FOR A UNIT UNDER SUBSECTION (4)
16 IF THE HOSPITAL CONSIDERS IT APPROPRIATE AFTER CONSIDERING THE
17 FOLLOWING FACTORS AND AFTER CONSULTING WITH THE DIRECT CARE
18 REGISTERED PROFESSIONAL NURSES IN THE UNIT ON THAT SHIFT:

19 (A) THE NUMBER OF PATIENTS IN THE UNIT AND ACUITY LEVEL OF
20 THOSE PATIENTS AS DETERMINED BY APPLYING THE HOSPITAL'S ACUITY TOOL
21 ON A SHIFT-BY-SHIFT BASIS.

22 (B) THE ANTICIPATED ADMISSIONS, DISCHARGES, AND TRANSFERS OF
23 PATIENTS IN THE UNIT DURING EACH SHIFT THAT AFFECTS DIRECT PATIENT
24 CARE.

25 (C) SPECIALIZED EXPERIENCE REQUIRED OF DIRECT CARE REGISTERED
26 PROFESSIONAL NURSES IN THE UNIT.

27 (D) STAFFING LEVELS AND SERVICES PROVIDED BY LICENSED

1 PRACTICAL NURSES OR OTHER ANCILLARY STAFF IN MEETING DIRECT PATIENT
2 CARE NEEDS THAT ARE NOT REQUIRED TO BE MET BY A DIRECT CARE
3 REGISTERED PROFESSIONAL NURSE.

4 (E) THE LEVEL OF TECHNOLOGY AVAILABLE THAT AFFECTS THE
5 DELIVERY OF DIRECT PATIENT CARE.

6 (F) THE LEVEL OF FAMILIARITY WITH HOSPITAL PRACTICES,
7 POLICIES, AND PROCEDURES USED DURING A SHIFT BY A DIRECT CARE
8 REGISTERED PROFESSIONAL NURSE WHO IS EMPLOYED BY AN OUTSIDE AGENCY.

9 (G) OBSTACLES TO THE EFFICIENT DELIVERY OF PATIENT CARE CAUSED
10 BY THE PHYSICAL LAYOUT OF THE UNIT OR THE HOSPITAL.

11 (9) THE MINIMUM DIRECT CARE REGISTERED PROFESSIONAL NURSE-TO-
12 PATIENT RATIO ESTABLISHED FOR EACH UNIT UNDER SUBSECTION (4) DOES
13 NOT LIMIT, REDUCE, OR OTHERWISE AFFECT THE NEED FOR OTHER LICENSED
14 OR UNLICENSED HEALTH CARE PROFESSIONALS, ASSISTANTS, OR SUPPORT
15 PERSONNEL NECESSARY TO PROVIDE SAFE PATIENT CARE WITHIN THE UNIT.

16 (10) EACH HOSPITAL SHALL CREATE AN ACCURATE RECORD OF ACTUAL
17 DIRECT CARE REGISTERED PROFESSIONAL NURSE-TO-PATIENT RATIOS IN EACH
18 UNIT FOR EACH SHIFT AND MAINTAIN THAT RECORD FOR NOT LESS THAN 3
19 YEARS. THE RECORD MUST INCLUDE THE NUMBER OF PATIENTS IN EACH UNIT
20 AND THE IDENTITY AND DUTY HOURS OF EACH DIRECT CARE REGISTERED
21 PROFESSIONAL NURSE ASSIGNED TO EACH PATIENT IN EACH UNIT FOR EACH
22 SHIFT. EACH HOSPITAL SHALL MAKE THE RECORD DESCRIBED IN THIS
23 SUBSECTION AVAILABLE TO THE DEPARTMENT, REGISTERED PROFESSIONAL
24 NURSES AND THEIR COLLECTIVE BARGAINING REPRESENTATIVES, IF ANY, AND
25 THE PUBLIC UNDER RULES PROMULGATED BY THE DEPARTMENT.

26 (11) NOT LATER THAN 5 YEARS AFTER THE EFFECTIVE DATE OF THE
27 AMENDATORY ACT THAT ADDED THIS SECTION AND ANNUALLY AFTER THAT, THE

1 STAFFING COMMITTEES ESTABLISHED UNDER SUBSECTION (3) SHALL EVALUATE
2 THE HOSPITAL'S STAFFING PLAN IN RELATION TO ACTUAL PATIENT CARE
3 REQUIREMENTS AND THE APPLICATION OF THE HOSPITAL'S ACUITY TOOL. A
4 HOSPITAL SHALL UPDATE ITS STAFFING PLAN TO THE EXTENT APPROPRIATE
5 BASED ON THE STAFFING COMMITTEES' EVALUATION.

6 (12) A HOSPITAL SHALL POST IN EACH UNIT A NOTICE IN A FORM
7 APPROVED BY THE DEPARTMENT. THE NOTICE MUST BE LOCATED IN A VISIBLE
8 AND CONSPICUOUS LOCATION THAT IS ACCESSIBLE TO HOSPITAL STAFF,
9 PATIENTS, AND THE PUBLIC. THE NOTICE MUST CONTAIN ALL OF THE
10 FOLLOWING INFORMATION:

11 (A) THE REQUIREMENTS OF THIS SECTION.

12 (B) AN EXPLANATION OF THE RIGHTS OF DIRECT CARE REGISTERED
13 PROFESSIONAL NURSES, PATIENTS, AND OTHER INDIVIDUALS UNDER THIS
14 SECTION.

15 (C) A STATEMENT THAT A DIRECT CARE REGISTERED PROFESSIONAL
16 NURSE, PATIENT, OR OTHER INDIVIDUAL MAY FILE A COMPLAINT WITH THE
17 DEPARTMENT AGAINST A HOSPITAL THAT THE DIRECT CARE REGISTERED
18 PROFESSIONAL NURSE, PATIENT, OR OTHER INDIVIDUAL BELIEVES HAS
19 VIOLATED THIS SECTION.

20 (D) INSTRUCTIONS ON HOW TO FILE A COMPLAINT WITH THE
21 DEPARTMENT FOR A VIOLATION OF THIS SECTION.

22 (13) THE DEPARTMENT SHALL ESTABLISH AND MAINTAIN A TOLL-FREE
23 TELEPHONE NUMBER TO PROVIDE INFORMATION REGARDING THE MINIMUM
24 DIRECT CARE REGISTERED PROFESSIONAL NURSE-TO-PATIENT RATIOS UNDER
25 SUBSECTION (4) AND TO RECEIVE COMPLAINTS ALLEGING VIOLATIONS OF
26 THIS SECTION. A HOSPITAL SHALL PROVIDE THE TOLL-FREE TELEPHONE
27 NUMBER TO EACH PATIENT ADMITTED TO THE HOSPITAL FOR INPATIENT CARE

1 AND INFORM EACH PATIENT THAT THE TOLL-FREE TELEPHONE NUMBER MAY BE
2 USED TO FILE A COMPLAINT ALLEGING A VIOLATION OF THIS SECTION.

3 (14) A DIRECT CARE REGISTERED PROFESSIONAL NURSE, A PATIENT,
4 OR ANOTHER INDIVIDUAL MAY FILE A COMPLAINT WITH THE DEPARTMENT
5 AGAINST A HOSPITAL THAT THE DIRECT CARE REGISTERED PROFESSIONAL
6 NURSE, PATIENT, OR OTHER INDIVIDUAL BELIEVES HAS VIOLATED THIS
7 SECTION. THE DEPARTMENT SHALL INVESTIGATE EACH COMPLAINT RECEIVED
8 IN THE MANNER PROVIDED FOR INVESTIGATING WRITTEN COMPLAINTS UNDER
9 SECTION 20176. IN ADDITION TO THE PROTECTIONS UNDER SECTIONS 20176A
10 AND 20180, AS APPLICABLE, AN INDIVIDUAL WHO FILES A COMPLAINT WITH
11 THE DEPARTMENT IS PROTECTED UNDER THE WHISTLEBLOWERS' PROTECTION
12 ACT, 1980 PA 469, MCL 15.361 TO 15.369.

13 (15) A HOSPITAL THAT FAILS TO SUBMIT AN ANNUAL STAFFING PLAN
14 AS REQUIRED UNDER THIS SECTION OR THAT DOES NOT MEET THE REQUIRED
15 STAFFING PLAN ESTABLISHED FOR EACH UNIT DURING EACH SHIFT IS IN
16 VIOLATION OF THIS SECTION. EACH DAY THAT THE STAFFING PLAN IS NOT
17 FILED WITH THE DEPARTMENT AND EACH SHIFT THAT DOES NOT SATISFY THE
18 MINIMUM STAFFING REQUIREMENT FOR THAT SHIFT IS A SEPARATE
19 VIOLATION. IF THE DEPARTMENT DETERMINES THAT A HOSPITAL HAS FAILED
20 TO SUBMIT AN ANNUAL STAFFING PLAN AS REQUIRED UNDER THIS SECTION OR
21 DOES NOT MEET THE REQUIRED STAFFING PLAN ESTABLISHED FOR EACH UNIT
22 DURING EACH SHIFT, THE DEPARTMENT SHALL REQUIRE THE HOSPITAL TO
23 ESTABLISH A CORRECTIVE ACTION PLAN TO PREVENT THE RECURRENCE OF THE
24 VIOLATION AND ASSESS AN ADMINISTRATIVE FINE OF NOT LESS THAN
25 \$10,000.00 OR MORE THAN \$25,000.00 FOR EACH VIOLATION OR, IF THE
26 HOSPITAL HAS SHOWN A PATTERN OF VIOLATIONS, NOT LESS THAN
27 \$25,000.00 OR MORE THAN \$50,000.00.

1 (16) THE DEPARTMENT SHALL PUBLISH ON ITS WEBSITE THE NAMES OF
2 THE HOSPITALS ON WHICH AN ADMINISTRATIVE FINE HAS BEEN IMPOSED
3 UNDER SUBSECTION (15), THE VIOLATION FOR WHICH THE FINE WAS
4 IMPOSED, AND ANY ADDITIONAL INFORMATION THAT THE DEPARTMENT
5 CONSIDERS APPROPRIATE. THE DEPARTMENT SHALL CONSIDER EACH VIOLATION
6 BY A HOSPITAL UNDER SUBSECTION (15) WHEN MAKING LICENSURE
7 DECISIONS.

8 (17) AN ADMINISTRATIVE FINE ASSOCIATED WITH A VIOLATION THAT
9 IS COLLECTED BY THE DEPARTMENT UNDER SUBSECTION (15) MUST BE
10 RETAINED BY THE DEPARTMENT AND USED PURSUANT TO LEGISLATIVE
11 APPROPRIATION FOR THE ADMINISTRATION OF THIS SECTION.

12 (18) THE DEPARTMENT SHALL PROMULGATE RULES TO IMPLEMENT THIS
13 SECTION.

14 (19) AS USED IN THIS SECTION:

15 (A) "ACUITY TOOL" MEANS A SYSTEM FOR ADDRESSING FLUCTUATIONS
16 IN PATIENT ACUITY LEVELS AND ASSESSING NECESSARY NURSING CARE FOR
17 EACH UNIT TO ENSURE SAFE PATIENT CARE BASED ON THE SEVERITY OF EACH
18 PATIENT'S ILLNESS AND NEED FOR SPECIALIZED EQUIPMENT AND
19 TECHNOLOGY, THE INTENSITY OF NURSING INTERVENTIONS REQUIRED FOR
20 EACH PATIENT, AND THE COMPLEXITY OF THE CLINICAL NURSING JUDGMENT
21 NEEDED TO DESIGN, IMPLEMENT, AND EVALUATE EACH PATIENT'S CARE PLAN.

22 (B) "DEPARTMENT" MEANS THE DEPARTMENT OF LICENSING AND
23 REGULATORY AFFAIRS.

24 (C) "LICENSED PRACTICAL NURSE" MEANS AN INDIVIDUAL LICENSED TO
25 ENGAGE IN THE PRACTICE OF NURSING AS A LICENSED PRACTICAL NURSE AS
26 DEFINED IN SECTION 17201.

27 (D) "MANDATORY OVERTIME" MEANS A MANDATED ASSIGNMENT FOR A

1 DIRECT CARE REGISTERED PROFESSIONAL NURSE TO WORK MORE THAN HIS OR
2 HER REGULARLY SCHEDULED HOURS ACCORDING TO HIS OR HER PREDETERMINED
3 WORK SCHEDULE.

4 (E) "PATTERN OF VIOLATIONS" MEANS A FINDING BY THE DEPARTMENT
5 OF 2 OR MORE VIOLATIONS IN 1 CALENDAR YEAR.

6 (F) "REGISTERED PROFESSIONAL NURSE" OR "R.N." MEANS THAT TERM
7 AS DEFINED IN SECTION 17201.

8 (G) "RURAL AREA" MEANS AN AREA THAT IS LOCATED OUTSIDE OF A
9 METROPOLITAN STATISTICAL AREA AS DEFINED BY THE OFFICE OF
10 MANAGEMENT AND BUDGET UNDER 42 USC 1395WW OR THAT IS LOCATED IN A
11 CITY, VILLAGE, OR TOWNSHIP WITH A POPULATION OF NO MORE THAN 12,000
12 AND IN A COUNTY WITH A POPULATION OF NO MORE THAN 110,000.
13 POPULATION IS DETERMINED ACCORDING TO THE 2000 FEDERAL DECENNIAL
14 CENSUS.

15 (H) "SCRUB ASSISTANT" MEANS AN INDIVIDUAL FUNCTIONING IN A
16 ROLE THAT IS ALSO KNOWN AS A SURGICAL TECHNICIAN, OPERATING ROOM
17 TECHNICIAN, SURGICAL TECH, FIRST ASSISTANT, SCRUB TECH, OR SCRUB. A
18 SCRUB ASSISTANT MAY BE A DIRECT CARE REGISTERED PROFESSIONAL NURSE.

19 (I) "STAFFING PLAN" MEANS A WRITTEN PLAN THAT ESTABLISHES THE
20 MINIMUM SPECIFIC NUMBER OF DIRECT CARE REGISTERED PROFESSIONAL
21 NURSES REQUIRED TO BE WORKING AT ALL TIMES IN EACH UNIT FOR EACH
22 SHIFT TO ENSURE SAFE PATIENT CARE.

23 (J) "UNFORESEEN EMERGENT SITUATION" MEANS AN OCCURRENCE THAT
24 IS UNPREDICTABLE, OR UNAVOIDABLE AT AN UNSCHEDULED OR UNPREDICTABLE
25 INTERVAL, AND RELATES TO HEALTH CARE DELIVERY AND REQUIRES
26 IMMEDIATE MEDICAL INTERVENTION OR CARE. UNFORESEEN EMERGENT
27 SITUATION DOES NOT INCLUDE A STATE OF EMERGENCY THAT RESULTS FROM A

1 LABOR DISPUTE IN THE HEALTH CARE INDUSTRY OR CONSISTENT
2 UNDERSTAFFING.

3 Enacting section 1. This amendatory act takes effect 90 days
4 after the date it is enacted into law.