

# SENATE BILL No. 387

May 18, 2017, Introduced by Senators WARREN, HUNE, KNEZEK, BIEDA and HOPGOOD and referred to the Committee on Health Policy.

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  
9        ANNUALLY AFTER THAT, A HOSPITAL SHALL SUBMIT ITS STAFFING PLAN TO  
10       THE DEPARTMENT.

11       (3) TO ASSIST IN THE DEVELOPMENT OF A STAFFING PLAN, A

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

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

19 (A) INTENSIVE/CRITICAL CARE: 1 TO 1.

20 (B) OPERATING ROOM: 1 TO 1, IF NOT LESS THAN 1 ADDITIONAL  
21 INDIVIDUAL SERVES AS A SCRUB ASSISTANT IN THE UNIT.

22 (C) LABOR AND DELIVERY:

23 (i) DURING SECOND AND THIRD STAGES OF LABOR: 1 TO 1.

24 (ii) DURING FIRST STAGE OF LABOR: 1 TO 2.

25 (iii) INTERMEDIATE CARE NEWBORN NURSERY: 1 TO 3.

26 (iv) NONCRITICAL ANTEPARTUM PATIENTS: 1 TO 4.

27 (v) POSTPARTUM MOTHER BABY COUPLET: 1 TO 3.

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

(D) POSTANESTHESIA CARE UNIT: 1 TO 2.

(E) EMERGENCY DEPARTMENT:

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

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

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

(F) STEPDOWN: 1 TO 3.

(G) TELEMETRY: 1 TO 3.

(H) MEDICAL/SURGICAL: 1 TO 4.

(I) PEDIATRICS: 1 TO 4.

(J) BEHAVIORAL HEALTH: 1 TO 4.

(K) 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 PROFESSIONAL NURSE-TO-PATIENT RATIO REQUIRED UNDER SUBSECTION (4), INCLUDE A REGISTERED PROFESSIONAL NURSE WHO IS NOT ASSIGNED TO PROVIDE DIRECT PATIENT CARE IN THAT UNIT OR WHO IS NOT ORIENTED,

1 QUALIFIED, AND COMPETENT TO PROVIDE SAFE PATIENT CARE IN THAT UNIT.

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

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

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

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

19 (B) THE ANTICIPATED ADMISSIONS, DISCHARGES, AND TRANSFERS OF  
20 PATIENTS IN THE UNIT DURING EACH SHIFT THAT AFFECTS DIRECT PATIENT  
21 CARE.

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

24 (D) STAFFING LEVELS AND SERVICES PROVIDED BY LICENSED  
25 PRACTICAL NURSES OR OTHER ANCILLARY STAFF IN MEETING DIRECT PATIENT  
26 CARE NEEDS THAT ARE NOT REQUIRED TO BE MET BY A DIRECT CARE  
27 REGISTERED PROFESSIONAL NURSE.

1 (E) THE LEVEL OF TECHNOLOGY AVAILABLE THAT AFFECTS THE  
2 DELIVERY OF DIRECT PATIENT CARE.

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

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

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

13 (10) NOT LATER THAN 5 YEARS AFTER THE EFFECTIVE DATE OF THE  
14 AMENDATORY ACT THAT ADDED THIS SECTION AND ANNUALLY AFTER THAT, THE  
15 STAFFING COMMITTEES ESTABLISHED UNDER SUBSECTION (3) SHALL EVALUATE  
16 THE HOSPITAL'S STAFFING PLAN IN RELATION TO ACTUAL PATIENT CARE  
17 REQUIREMENTS AND THE APPLICATION OF THE HOSPITAL'S ACUITY TOOL. A  
18 HOSPITAL SHALL UPDATE ITS STAFFING PLAN TO THE EXTENT APPROPRIATE  
19 BASED ON THE STAFFING COMMITTEES' EVALUATION.

20 (11) A HOSPITAL SHALL POST IN EACH UNIT A NOTICE IN A FORM  
21 APPROVED BY THE DEPARTMENT. THE NOTICE MUST BE LOCATED IN A VISIBLE  
22 AND CONSPICUOUS LOCATION THAT IS ACCESSIBLE TO HOSPITAL STAFF,  
23 PATIENTS, AND THE PUBLIC. THE NOTICE MUST CONTAIN ALL OF THE  
24 FOLLOWING INFORMATION:

25 (A) THE REQUIREMENTS OF THIS SECTION.

26 (B) AN EXPLANATION OF THE RIGHTS OF DIRECT CARE REGISTERED  
27 PROFESSIONAL NURSES, PATIENTS, AND OTHER INDIVIDUALS UNDER THIS

1 SECTION.

2 (C) A STATEMENT THAT A DIRECT CARE REGISTERED PROFESSIONAL  
3 NURSE, PATIENT, OR OTHER INDIVIDUAL MAY FILE A COMPLAINT WITH THE  
4 DEPARTMENT AGAINST A HOSPITAL THAT THE DIRECT CARE REGISTERED  
5 PROFESSIONAL NURSE, PATIENT, OR OTHER INDIVIDUAL BELIEVES HAS  
6 VIOLATED THIS SECTION.

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

9 (12) THE DEPARTMENT SHALL ESTABLISH AND MAINTAIN A TOLL-FREE  
10 TELEPHONE NUMBER TO PROVIDE INFORMATION REGARDING THE MINIMUM  
11 DIRECT CARE REGISTERED PROFESSIONAL NURSE-TO-PATIENT RATIOS UNDER  
12 SUBSECTION (4) AND TO RECEIVE COMPLAINTS ALLEGING VIOLATIONS OF  
13 THIS SECTION. A HOSPITAL SHALL PROVIDE THE TOLL-FREE TELEPHONE  
14 NUMBER TO EACH PATIENT ADMITTED TO THE HOSPITAL FOR INPATIENT CARE  
15 AND INFORM EACH PATIENT THAT THE TOLL-FREE TELEPHONE NUMBER MAY BE  
16 USED TO FILE A COMPLAINT ALLEGING A VIOLATION OF THIS SECTION.

17 (13) A DIRECT CARE REGISTERED PROFESSIONAL NURSE, A PATIENT,  
18 OR ANOTHER INDIVIDUAL MAY FILE A COMPLAINT WITH THE DEPARTMENT  
19 AGAINST A HOSPITAL THAT THE DIRECT CARE REGISTERED PROFESSIONAL  
20 NURSE, PATIENT, OR OTHER INDIVIDUAL BELIEVES HAS VIOLATED THIS  
21 SECTION. THE DEPARTMENT SHALL INVESTIGATE EACH COMPLAINT RECEIVED  
22 IN THE MANNER PROVIDED FOR INVESTIGATING WRITTEN COMPLAINTS UNDER  
23 SECTION 20176. IN ADDITION TO THE PROTECTIONS UNDER SECTIONS 20176A  
24 AND 20180, AS APPLICABLE, AN INDIVIDUAL WHO FILES A COMPLAINT WITH  
25 THE DEPARTMENT IS PROTECTED UNDER THE WHISTLEBLOWERS' PROTECTION  
26 ACT, 1980 PA 469, MCL 15.361 TO 15.369.

27 (14) A HOSPITAL THAT FAILS TO SUBMIT AN ANNUAL STAFFING PLAN

1 AS REQUIRED UNDER THIS SECTION OR THAT DOES NOT MEET THE REQUIRED  
2 STAFFING PLAN ESTABLISHED FOR EACH UNIT DURING EACH SHIFT IS IN  
3 VIOLATION OF THIS SECTION. EACH DAY THAT THE STAFFING PLAN IS NOT  
4 FILED WITH THE DEPARTMENT AND EACH SHIFT THAT DOES NOT SATISFY THE  
5 MINIMUM STAFFING REQUIREMENT FOR THAT SHIFT IS A SEPARATE  
6 VIOLATION. IF THE DEPARTMENT DETERMINES THAT A HOSPITAL HAS FAILED  
7 TO SUBMIT AN ANNUAL STAFFING PLAN AS REQUIRED UNDER THIS SECTION OR  
8 DOES NOT MEET THE REQUIRED STAFFING PLAN ESTABLISHED FOR EACH UNIT  
9 DURING EACH SHIFT, THE DEPARTMENT SHALL REQUIRE THE HOSPITAL TO  
10 ESTABLISH A CORRECTIVE ACTION PLAN TO PREVENT THE RECURRENCE OF THE  
11 VIOLATION AND ASSESS AN ADMINISTRATIVE FINE OF NOT LESS THAN  
12 \$10,000.00 OR MORE THAN \$25,000.00 FOR EACH VIOLATION OR, IF THE  
13 HOSPITAL HAS SHOWN A PATTERN OF VIOLATIONS, NOT LESS THAN  
14 \$25,000.00 OR MORE THAN \$50,000.00.

15 (15) THE DEPARTMENT SHALL PUBLISH ON ITS WEBSITE THE NAMES OF  
16 THE HOSPITALS ON WHICH AN ADMINISTRATIVE FINE HAS BEEN IMPOSED  
17 UNDER SUBSECTION (14), THE VIOLATION FOR WHICH THE FINE WAS  
18 IMPOSED, AND ANY ADDITIONAL INFORMATION THAT THE DEPARTMENT  
19 CONSIDERS APPROPRIATE. THE DEPARTMENT SHALL CONSIDER EACH VIOLATION  
20 BY A HOSPITAL UNDER SUBSECTION (14) WHEN MAKING LICENSURE  
21 DECISIONS.

22 (16) AN ADMINISTRATIVE FINE ASSOCIATED WITH A VIOLATION THAT  
23 IS COLLECTED BY THE DEPARTMENT UNDER SUBSECTION (14) MUST BE  
24 RETAINED BY THE DEPARTMENT AND USED PURSUANT TO LEGISLATIVE  
25 APPROPRIATION FOR THE ADMINISTRATION OF THIS SECTION.

26 (17) THE DEPARTMENT SHALL PROMULGATE RULES TO IMPLEMENT THIS  
27 SECTION.

(18) AS USED IN THIS SECTION:

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

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

(C) "MANDATORY OVERTIME" MEANS A MANDATED ASSIGNMENT FOR A DIRECT CARE REGISTERED PROFESSIONAL NURSE TO WORK MORE THAN HIS OR HER REGULARLY SCHEDULED HOURS ACCORDING TO HIS OR HER PREDETERMINED WORK SCHEDULE.

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

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

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

(G) "SCRUB ASSISTANT" MEANS AN INDIVIDUAL FUNCTIONING IN A



1   ROLE THAT IS ALSO KNOWN AS A SURGICAL TECHNICIAN, OPERATING ROOM  
2   TECHNICIAN, SURGICAL TECH, FIRST ASSISTANT, SCRUB TECH, OR SCRUB. A  
3   SCRUB ASSISTANT MAY BE A DIRECT CARE REGISTERED PROFESSIONAL NURSE.

4       (H) "STAFFING PLAN" MEANS A WRITTEN PLAN THAT ESTABLISHES THE  
5   MINIMUM SPECIFIC NUMBER OF DIRECT CARE REGISTERED PROFESSIONAL  
6   NURSES REQUIRED TO BE WORKING AT ALL TIMES IN EACH UNIT FOR EACH  
7   SHIFT TO ENSURE SAFE PATIENT CARE.

8       (I) "UNFORESEEN EMERGENT SITUATION" MEANS AN OCCURRENCE THAT  
9   IS UNPREDICTABLE, OR UNAVOIDABLE AT AN UNSCHEDULED OR UNPREDICTABLE  
10   INTERVAL, AND RELATES TO HEALTH CARE DELIVERY AND REQUIRES  
11   IMMEDIATE MEDICAL INTERVENTION OR CARE. UNFORESEEN EMERGENT  
12   SITUATION DOES NOT INCLUDE A STATE OF EMERGENCY THAT RESULTS FROM A  
13   LABOR DISPUTE IN THE HEALTH CARE INDUSTRY OR CONSISTENT  
14   UNDERSTAFFING.

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