

My notes, by Mary O'Connor - Combination of comments and excerpts from amended HB106 Patient Safety Act [Regular Session 2023-2024 House Bill 0106 P.N. 1462 \(state.pa.us\)](#)

Chair Dan Frankel introduced Amendment 794 with the following changes approved by a 12-9 vote along party lines:

NEW Section 803 C "Staffing Plans" (Removes Section 803 C "Nurse Staffing Committees" bureaucratic structure, and replaced with requiring

- (a) each hospital to develop hospital-wide staffing plans to ensure the hospital is staffed to meet the health care needs of the patients.
- (b) Requirements with staffing plan shall:
 - (1) be based on specialized qualifications and competencies of the nursing staff and provide for the skill mix and level of competency needed
 - (2) Size of hospital and activities and rate of admissions, discharges, & transfers provide for the national accreditation organizations
 - (3) total diagnoses of the unit and number of nurses to care for them as defined by the Medicare severity diagnosis related groups as adopted by the CDC
 - (4) Consistent with nationally recognized evidence based standards and guidelines established by professional nursing specialty organizations and credentialing bodies
 - (5) Recognize differences in patient acuity
 - (6) Recognize availability of ancillary staff support on the unit
 - Refer to bill for (7) thru (9)
 - (10) comply with Section 802 C (Staffing ratios)

Section 805 C (replaces old 806 C) Review of Staffing Plan

- (A) Duty of hospital - review staffing plan at least every year (refer to bill for additional requirements)

Section 806-C "Safe Harbor" provisions- nurses who are asked to take an assignment they feel compromises patient safety can formally document this without compromising their license. (refer to bill for additional requirements)

Section 807-C Enforcement

- The DOH will establish a portal for complaints related to staffing and must investigate the complaint within 30 days.

Section 808-C Violations and right to issue penalties.

- The DOH may impose civil and administrative penalties to ensure compliance, including, but not limited to:
 - Corrective action plans
 - Civil penalties
 - Declaration of immediate jeopardy
 - Suspension or revocation of hospital license

- Penalties shall increase in severity for repeat violations...except that a civil penalty may be no less than \$2000 per violation.

Section 809-C Public posting

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- The hospital Staffing Plans submitted to the Dept. of Health (DOH)
- Available to patients and visitors are the difference between required staff and actual staff by shift. (refer to bill for additional requirements)
- The DOH shall post on publicly available website:

Section 810-C Emergency Declarations

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- (A) if an emergency causes a significant and atypical change in the number of patients may allow variations from the Staffing Plans' fixed ratios, but hospitals should try to adhere to them as much as possible during this time. (refer to bill for additional requirements)
- "emergency" - event declared an emergency by federal government, head of state, local, county, or municipal governments.

Democratic HEALTH Committee Members' Remarks:

- Rep. Mehaffie - Representative for 106th district; complaints by nurses for past six years that there aren't enough nurses. Stated that there is no nursing shortage, but there is a nursing shortage in hospitals. Talked with nurses across the state.
- Rep. Kosierowski- nurse for 29 years, hasn't worked at the bedside for many years; has a predictable job as a representative but as a nurse had unpredictable hospital assignments. Nurses deserve assignment that is predictable. Existing problem with nutrient shortage.
- Rep. Tomlinson - sister is an ER nurse who related to her one day's assignment of having "4 ICU patients"; related each patient's diagnosis and needs.
- Rep. Venkat (ER physician from Pittsburgh PA, elected Nov. 2022) - said there is a severe crisis with nurse staffing, and that opponents for this bill are "Absolutists", but there are no absolutes. He is voting "Yes" for the amended bill to get it out of Committee, and the legislation needs to be considered in the House to provide a comprehensive solution.
- Rep. Mayes - Acknowledged nurses' work.
- Rep. Borowski -Said father is a doctor, and she personally has 30 years in healthcare but is not a nurse, elected Nov. 2022. Said her father was a patient in Bryn Mawr Hospital last week. Has similar reservations as Dr. Venkat, believes a comprehensive bill related to improving licensure, education, needed, but this bill is the 1st step.
- Rep. Tarik Kahn (Nurse Practitioner, recent former President of PSNA, actively campaigned for mandatory nurse staffing ratios, elected Nov. 2022). Said he started this process 15 years ago. Left bedside nursing because some days had 3 patients, other days 6 patients, and needed two nurses to do the job caring for these 6 patients. For the past 3 1/2 years of the pandemic, nurses wanted "safe

staffing centers". Received 400/600 emails last weekend from nurses who want "safe staffing centers".

Republican HEALTH Comm. Members' Remarks:

- Minority Chair Kathy Rapp at 28.30 of video (served as majority chair of House HEALTH Committee past 10 years.)
- Honors all nurses for the work that they do. Her opposition to the bill reflects the realities of the bill. This bill will harm patient care, not improve patient care. There is no one size fits all nurse staffing.
- Struggling hospitals will have two choices:
 - 32% of acute care hospitals in Pennsylvania have < 100 beds.
 - 22% of these are rural counties hospitals.
 - 40% of small size hospitals make up hospitals in Northwest, Northeast, Northcentral, and Southcentral regions of PA
 - Researcher (Dr. Linda Aiken) who studied nurse staffing only looked at hospitals with >100 beds.
- 4. Option 1: To close, e.g., rural hospitals would have more difficulty since the closest hospitals are one hour away
- 5. Option 2: Close hospital beds due to staffing shortage, forcing hospitals to go on divert status. Note: Divert status is not a status they can place on EMS, but it is only a request that the hospital can make to the EMS. If the EMS brings a patient to the hospital anyways, the hospital is required to take care of that patient. Patients waiting in ambulances waiting to be transported into hospital will still be considered as part of the mandatory nurse ratio for the ED. The DOH cannot take this extenuating situation into account because the bill offers no flexibility
- Amended bill creates:
 - This is unsustainable.
 - Fines are not allocated to struggling hospitals.
 - Fines goes solely to the DOH
 - Nurses who called Rep. Rapp's offices need to understand the fines--nurses will not see a dime of this money.
 - How does money going into the DOH help hospitals or nurses?
 - Worse, DOH has authority to suspend or revoke hospital license.
 - Amended version of HB106 allows DOH to increase sanctions for violations, 1st offense has no cap, can fine hospital as much as \$100,000. DOH has wide latitude to establish fines.
 - Under the Health Care Facilities Act, fines cap at \$500; but for violations of HB106, there is no limit on the fines for sanctions.
 - One size fits all to hospitals
 - DOH cannot make any exceptions.
 - Sanctions of minimum of \$2,000 with no maximum (*Chair Frankel mistakenly stated fines of \$200 when introducing the amendment*)
- Ancillary staff - employees who have effect on care of patients, does not include doctors or nurses
- EDs cannot predict number of patients and cannot turn away patients who come to the ED for care

- DOH has no leeway to waive the sanction due to this circumstance, so the hospital will be fined.
- Bill creates a Catch 22 with federal law EMTALA.
- Hospitals prohibited from refusing to provide care.
- Violation of state law if treat patients but exceeds ratios, will be sanctioned.
- Violation of federal law if turn patients away.

Mandating staff ratios will not create nurses.

Re: California which is the only state with nursing ratios. Hospitals are closing in CA. Quality of patient care reported in the lower 4th quartile, whereas PA reported in 2nd quartile.

Hospitals with high Medicaid patients in PA are struggling. 25% of PA's population is on Medical Assistance.

Provided a very long list of organizations who are in OPPOSITION to HB106, including:

- HAP
- WHS
- UPMC
- Tower
- Highmark
- AHN
- St. LUKES
- Meadville
- Excela
- **PONL!**
- PA Academy of Ophthalmology
- PA Society of Health System Pharmacists
- PA Academy of ER Physicians
- PA Chamber of Commerce
- Ambulance Association of PA

Notes compiled by Mary O'Connor
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