HOUSE BILL No. 5013


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:

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

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

WITHIN THE APPLICABLE TIME PERIOD PRESCRIBED IN THIS SUBSECTION AND...
ANNUALLY AFTER THAT, A HOSPITAL SHALL SUBMIT ITS STAFFING PLAN TO THE DEPARTMENT.

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

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

(i) INTENSIVE/Critical CARE: 1 TO 1.

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

(iii) LABOR AND DELIVERY:

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

(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 COUPLETT: 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
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,
QUALIFIED, AND COMPETENT TO PROVIDE SAFE PATIENT CARE IN THAT UNIT.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(A) THE REQUIREMENTS OF THIS SECTION.

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

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

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

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

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

(15) A HOSPITAL THAT FAILS TO SUBMIT AN ANNUAL STAFFING PLAN
AS REQUIRED UNDER THIS SECTION OR THAT DOES NOT MEET THE REQUIRED
STAFFING PLAN ESTABLISHED FOR EACH UNIT DURING EACH SHIFT IS IN
VIOLATION OF THIS SECTION. EACH DAY THAT THE STAFFING PLAN IS NOT
FILED WITH THE DEPARTMENT AND EACH SHIFT THAT DOES NOT SATISFY THE
MINIMUM STAFFING REQUIREMENT FOR THAT SHIFT IS A SEPARATE
VIOLATION. IF THE DEPARTMENT DETERMINES THAT A HOSPITAL HAS FAILED
TO SUBMIT AN ANNUAL STAFFING PLAN AS REQUIRED UNDER THIS SECTION OR
DOES NOT MEET THE REQUIRED STAFFING PLAN ESTABLISHED FOR EACH UNIT
DURING EACH SHIFT, THE DEPARTMENT SHALL REQUIRE THE HOSPITAL TO
ESTABLISH A CORRECTIVE ACTION PLAN TO PREVENT THE RECURRANCE OF THE
VIOLATION AND ASSESS AN ADMINISTRATIVE FINE OF NOT LESS THAN
$10,000.00 OR MORE THAN $25,000.00 FOR EACH VIOLATION OR, IF THE
HOSPITAL HAS SHOWN A PATTERN OF VIOLATIONS, NOT LESS THAN
$25,000.00 OR MORE THAN $50,000.00.
(16) THE DEPARTMENT SHALL PUBLISH ON ITS WEBSITE THE NAMES OF
THE HOSPITALS ON WHICH AN ADMINISTRATIVE FINE HAS BEEN IMPOSED
UNDER SUBSECTION (15), THE VIOLATION FOR WHICH THE FINE WAS
IMPOSED, AND ANY ADDITIONAL INFORMATION THAT THE DEPARTMENT
CONSIDERS APPROPRIATE. THE DEPARTMENT SHALL CONSIDER EACH VIOLATION
BY A HOSPITAL UNDER SUBSECTION (15) WHEN MAKING LICENSURE
DECISIONS.

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

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

(19) 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) "DEPARTMENT" MEANS THE DEPARTMENT OF LICENSING AND
REGULATORY AFFAIRS.

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

(D) "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.

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

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

(G) "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.

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

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

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

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