101ST GENERAL ASSEMBLY
State of Illinois
2019 and 2020
HB3585

by Rep. Theresa Mah

SYNOPSIS AS INTRODUCED:

New Act
210 ILCS 85/2.5 new
225 ILCS 65/50-17 new

Creates the Hospital Patient Protection Act. Provides for minimum
direct care registered professional nurse-to-patient staffing ratios in
hospitals, long-term acute care hospitals, and ambulatory surgical
treatment centers. Sets forth essential functions of direct care registered
professional nurses relating to hospital patient care. Sets forth certain
rights of direct care registered professional nurses, including the rights
to protected speech and patient advocacy. Prohibits a hospital, long-term
acute care hospital, and ambulatory surgical treatment center from
interfering with a nurse's exercise of those rights, and prohibits other
retaliatory or discriminatory action by a hospital. Provides for monetary
and equitable relief for violations of the Act, and provides for civil
penalties. Requires a hospital, long-term acute care hospital, and
ambulatory surgical treatment center to post certain provisions of the Act
for review by the hospital's employees and patients and by the public.
Amends the Hospital Licensing Act and the Nurse Practice Act to provide
that in the case of a conflict between a provision of either of those Acts
and a provision of the Hospital Patient Protection Act, the Hospital
AN ACT concerning regulation.

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

ARTICLE 1. SHORT TITLE

Section 1-1. Short title. This Act may be cited as the Hospital Patient Protection Act.

ARTICLE 5. DEFINITIONS

Section 5-1. Definitions. In this Act:

"Ambulatory surgical treatment center" has the meaning ascribed to it in Section 3 of the Ambulatory Surgical Treatment Center Act.

"Competence" has the meaning ascribed to it in Section 50-10 of the Nurse Practice Act.

"Comprehensive nursing assessment" has the meaning ascribed to it in Section 50-10 of the Nurse Practice Act.

"Department" means the Department of Public Health.

"Direct care registered professional nurse" means a competent registered professional nurse who has accepted a direct, hands-on patient care assignment to implement the nursing care plan for such patient and the nursing process while, at all times, exercising independent professional
judgment in the exclusive interest of the patient.

"Hospital" has the meaning ascribed to it in subsection (A) of Section 3 of the Hospital Licensing Act.

"LTAC hospital" or "long term acute care hospital" has the meaning ascribed to it in Section 10 of the Long Term Acute Care Hospital Quality Improvement Transfer Program Act.

"Professional judgment" means the exercise of a direct care registered professional nurse's independent clinical judgment, through the utilization of a scientific process founded on a professional body of knowledge and experience and based on a comprehensive nursing assessment, to provide appropriate nursing care to a particular patient at a particular time and in making independent decisions about patient care and about the nursing plan for a patient's care, including the need for additional nursing or other staff.

ARTICLE 10. MINIMUM SAFE STAFFING RATIOS

Section 10-1. Direct care registered professional nurse staffing generally.

(a) Each hospital shall provide staffing by direct care registered professional nurses in accordance with direct care registered professional nurse-to-patient staffing requirements and ratios specified in this Act. Staffing for care not requiring a direct care registered professional nurse is not included within the registered professional nurse-to-patient
ratios and shall be determined under Section 10-30.

(b) No hospital shall assign a direct care registered professional nurse to a clinical unit or patient care area unless that hospital and such direct care registered professional nurse determine that the direct care registered professional nurse has demonstrated and validated current competence in providing care in that unit or area and has also received orientation to that hospital's clinical area sufficient to provide competent safe, therapeutic, and effective nursing care to patients in that area. The policies and procedures of the hospital shall contain the hospital's criteria for making this determination.

Section 10-5. Direct care registered professional nurse-to-patient ratios generally.

(a) Each hospital, LTAC hospital, and ambulatory surgical treatment centers is subject to the staffing requirements and the direct care registered professional nurse-to-patient ratio requirements under this Act.

(b) Each hospital, LTAC hospital, and ambulatory surgical center shall provide that, at all times during each shift within each clinical unit and each patient care area, a direct care registered professional nurses shall not be assigned at any time more than the maximum number of patients described in the direct care registered professional nurse-to-patient ratios in this Article.
(1) Each patient shall be assigned to a direct care registered professional nurse at all times and may not be assigned to more than one direct care registered professional nurse at any time unless each direct care registered professional nurse has no other patient assignments.

(2) For purposes of this subsection, "assigned" means that the direct care registered professional nurse has responsibility for the provision of care to a particular patient within her or his validated competency and directly provides the assessment, planning, supervision, implementation, and evaluation of such patient's nursing care.

(c) There shall be no averaging of the number of patients and the total number of direct care registered professional nurses on each clinical unit or patient care area during any one shift or over any period of time.

(d) Only direct care registered professional nurses providing direct patient care shall be included in the calculation of the direct care registered professional nurse-to-patient ratios. Nurse administrators, nurse supervisors, nurse managers, charge nurses, case managers, or any other hospital administrator or supervisor shall not be included in the calculation of the direct care registered professional nurse-to-patient ratio unless that nurse has a current and active direct patient care assignment and provides
direct patient care in compliance with the requirements of this
section, including competency requirements. The exemption in
this subsection shall apply only during the hours in which the
individual registered professional nurse has the principal
responsibility of providing direct patient care and has no
additional job duties as would other direct care registered
professional nurses.

(e) Only a direct care registered professional nurse who
had demonstrated current competence in providing care on a
particular clinical unit or patient care area and who has
received orientation to such unit or area shall relieve another
direct care registered professional nurses during breaks,
meals, and other routine, expected absences from the clinical
unit or patient care area.

Section 10-10. Direct care registered professional nurse
staffing; emergency department.

(a) There shall be no fewer than 2 direct care registered
professional nurses physically present in the emergency
department at all times.

(1) At least one direct care registered professional
nurse shall be assigned to triage patients.

(2) The direct care registered professional nurse
assigned to triage patients shall be immediately available
at all times to triage patients when they arrive in the
emergency department. The direct care registered
professional nurse assigned to triage patients shall perform triage functions only.

(3) Triage, base radio responder, and specialty or flight registered professional nurses do not count in the calculation of the direct care registered professional nurse-to-patient ratio.

(b) A direct care registered professional nurse who has been assigned a critical care patient in the emergency department shall have validated critical care competency and shall not be assigned more than 2 patients. A patient in the emergency department shall be considered a critical care patient when the patient meets the criteria for admission to a critical care service area within the hospital.

(c) A direct care registered professional nurse who has been assigned a critical trauma patient in the emergency department shall not be assigned more than one patient. A critical trauma patient is a patient who has injuries to an anatomic area that (i) require lifesaving interventions or (ii) in conjunction with unstable vital signs, pose an immediate threat to life or limb.

Section 10-15. Direct care registered professional nurse-to-patient ratios; hospital, LTAC hospital, and ambulatory surgical treatment center clinical units or patient care areas.

(a) The direct care registered professional nurse shall not
be assigned more that one patient when such registered professional nurse has been assigned to the duties of the circulating registered professional nurse in the operating room or during a cesarean delivery; assigned to an active labor patient or patient with medical or obstetrical complications; when initiating epidural anesthesia in the labor and delivery suite; when assigned to an unstable or in resuscitation period newborn; when assigned to a critical trauma patient in the emergency department; or when assigned to a patient receiving conscious sedation.

(b) The direct care registered professional nurse shall not be assigned more that 2 patients when such registered professional nurse has been assigned to a critical care, intensive care, neonatal intensive care, labor and delivery, coronary care, acute respiratory care, post-anesthesia recovery (regardless of the type of anesthesia the patient received), or burn units or patient care areas; critical care patients in the emergency department; or immediate post-partum patients.

(c) The direct care registered professional nurse shall not be assigned more that 3 patients when such registered professional nurse has been assigned to an emergency department; a step-down or intermediate intensive care, pediatric, telemetry, observation, or clinical decision unit or patient care area; a combined labor/delivery/post-partum unit or patient care area; or an ante-partum patient who is not
(d) The direct care registered professional nurse shall not be assigned more than 4 patients when such registered professional nurse has been assigned to a medical/surgical or pre-surgical/admission unit or patient care area; a psychiatric or other specialty care unit or patient care area; post-partum patients, post-surgical gynecological patients, or mothers only; recently born infants; or combined post-cesarean delivery mothers and newborns.

(e) The direct care registered professional nurse shall not be assigned more than 5 patients when such registered professional nurse has been assigned to a well-baby nursery or a rehabilitation unit or patient care area; or for a skilled nursing facility.

(f) The direct care registered professional nurse shall not be assigned more than 6 patients or three couplets when such registered professional nurse has been assigned to a postpartum units or patient care areas. In the event of multiple births, the total number of mothers plus infants assigned to a single direct care registered professional nurse shall never exceed 6.

Section 10-20. Staffing requirements in relation to hospital, LTAC hospital, or ambulatory surgical treatment center clinical units or patient care areas.

(a) Identifying a clinical unit or patient care area by a name or term other than those listed in this Article, does not
affect a hospital, LTAC hospital, or ambulatory surgical treatment centers' requirement to staff the unit at the direct care registered professional nurse-to-patient ratios identified for the level of intensity or type of care described in this Article.

(b) Patients shall be cared for only on clinical units or patient care areas where the level of intensity, type of care, and direct care registered professional nurse-to-patient ratios meet the individual requirements and needs of each patient. The use of acuity-adjustable clinical units or patient care areas is strictly prohibited.

Section 10-25. Staffing committees and staffing plans.

(a) Any method, software, or tool used to create or evaluate a staffing plan adopted by a hospital, LTAC hospital, or ambulatory surgical treatment center shall be established in coordination with direct care registered professional nurses and shall be transparent in all respects, including disclosure of detailed documentation of the methodology used to determine nursing staffing and identifying each factor, assumption, and value used in applying such methodology.

(b) The Department shall establish procedures to provide that the documentation submitted under subsection (a) is available for public inspection in its entirety.

Section 10-30. Adjustments to ratios and nursing staff.
(a) The assigned direct care registered professional nurse shall determine whether (1) the number of patients assigned to a registered professional nurse should be reduced, relative to the applicable numerical ratio and/or (2) additional nursing staff, such as licensed practical nurses, certified nursing assistants, and other ancillary staff, excluding medical assistants, shall be assigned.

(b) Any assignment of additional staff under subsection (a) shall be based on the assigned direct care registered professional nurse's comprehensive nursing assessment of the severity and complexity of the individual patient's nursing care needs; the intensity of nursing interventions required; and the need for specialized equipment.

Section 10-35. Record of staff assignments. Every hospital shall keep a record of the actual direct care registered professional nurse, licensed practical nurse, certified nursing assistant, and other ancillary staff assignments to individual patients documented on a day-to-day, shift-by-shift basis and must keep copies of its staff assignments on file for a period of 3 years.

Section 10-40. Changes in patient census.

(a) Every hospital shall plan for routine fluctuations, such as admissions, discharges, and transfers, in its patient census.
(b) If a health care emergency causes a change in the number of patients on a clinical care unit or patient care area, the hospital must demonstrate that immediate and diligent efforts were made to maintain required staffing levels. For purposes of this subsection, "health care emergency" means an emergency declared by the federal government or the head of a State or local governmental entity.

Section 10-45. Prohibited activities.

(a) A hospital, LTAC hospital, or ambulatory surgical treatment centers may not directly assign any unlicensed personnel to perform registered professional nurse functions in lieu of care delivered by a registered professional nurse and may not assign unlicensed personnel to perform registered professional nurse functions under the supervision of a direct care registered professional nurse.

(b) Unlicensed personnel may not perform tasks that require the clinical assessment, professional judgment, and skill of a licensed registered professional nurse, including, without limitation: activities that require a nursing assessment or nursing judgment during implementation; physical, psychological, and social assessments that require nursing judgment, intervention, referral, or follow-up; formulation of a plan of nursing care and evaluation of the patient's response to the care provided; and administration of medications.

(c) A hospital, LTAC hospital, or ambulatory surgical
treatment centers may not impose mandatory overtime requirements to meet the staffing ratios required in this Article.

(d) A hospital, LTAC hospital, or ambulatory surgical treatment centers may not impose lay-offs of licensed or practical nurses, certified nursing assistants, or other ancillary staff to meet the direct care registered professional nurse-to-patient ratio requirements of this Article.

(e) A hospital or LTAC hospital shall not assign medical assistants to clinical care units or patient care areas including the emergency department, GI Labs, or cardiac diagnostic and/or intervention labs.

(f) An ambulatory surgical center shall not assign medical assistants to clinical care units or patient care areas.

(g) A hospital, LTAC hospital, or ambulatory surgical treatment center shall not employ video monitors or any form of electronic visualization of a patient as a substitute for the direct observation required for patient assessment by the direct care registered professional nurse or required for patient protection. Video monitors or any form of electronic visualization of a patient shall not be included in the calculation of the direct care registered professional nurse-to-patient ratio required in this Article and shall not replace the requirement of paragraph (1) of subsection (b) of Section 10-5 that each patient shall be assigned to a direct care registered professional nurse who shall provide the
assessment, planning, implementation, and evaluation of the
nursing care provided to the patient and have the
responsibility for the provision of care to a particular
patient within such direct care registered professional
nurse's scope of practice.

Section 10-50. Consumer protection. Every hospital shall
post on a day-to-day, shift-by-shift basis, in a conspicuous
place visible and accessible to patients, hospital staff, and
the public (i) the required minimum ratios of direct care
registered professional nursing staff to patients on each
clinical unit or patient care area, (ii) additional staffing
requirements as determined by the assigned direct care
registered professional nurse under Section 10-30, and (iii)
the actual direct care registered professional
nurse-to-patient ratio, number of staff, and staff mix
provided. Every hospital shall give to each patient admitted to
the hospital for inpatient care a toll-free telephone number
for the Department of Public Health to report inadequate
staffing or care.

Section 10-55. Use of rapid response teams as first
responders prohibited. In no case may a hospital, LTAC
hospital, or ambulatory surgical treatment center use rapid
response teams as first responders.
ARTICLE 15. DIRECT CARE REGISTERED PROFESSIONAL NURSE

FUNCTIONS RELATING TO PATIENT CARE

Section 15-1. Functions generally.

(a) A direct care registered professional nurse, holding a valid license to practice as a registered professional nurse, employing scientific knowledge and experience in the physical, social, and biological sciences and exercising independent professional judgment in applying the nursing process in the exclusive interests of the patient, shall directly perform the following essential functions:

(1) Continuous and ongoing comprehensive nursing assessments of a patient's condition based upon the independent professional judgment of the direct care registered professional nurse.

(2) Planning, implementation, and evaluation of the nursing care provided to each patient. The implementation of nursing care may be assigned by the direct care registered professional nurse responsible for the patient to other licensed nursing staff or to unlicensed staff, subject to any limitations of the licensure, certification, level of validated competency, or applicable law concerning such staff. In any case, however:

(A) The direct care registered professional nurse assigned to a patient must determine in her or his professional judgment that nursing personnel to be
assigned patient care tasks possess the necessary preparation and capability to competently perform the assigned tasks.

(B) The direct care registered professional nurse may assign the implementation of nursing care only when the registered professional nurse is physically present and available.

(3) Assessment, planning, implementation, and evaluation of patient education, including ongoing discharge education of each patient.

(b) The planning and delivery of patient care (i) shall reflect all elements of the nursing process, including comprehensive nursing assessment, nursing diagnosis, planning, intervention, evaluation, and, as circumstances require, patient advocacy, and (ii) shall be initiated by a direct care registered professional nurse at the time of a patient's admission to the hospital.

(c) The nursing plan for a patient's care shall be discussed with and developed as a result of coordination with the patient, the patient's family, or other representatives of the patient, when appropriate, and staff of other disciplines involved in the care of the patient.

(d) The direct care registered professional nurse shall evaluate the effectiveness of the care plan (i) through comprehensive nursing assessments based on direct observation of the patient's physical condition and behavior, signs and
symptoms of illness, and reactions to treatment and (ii) through communication with the patient and other care givers as applicable. The direct care registered professional nurse shall modify the plan as needed.

(e) Information related to the patient's initial comprehensive nursing assessment and reassessments, nursing diagnosis, plan, intervention, evaluation, and patient advocacy shall be permanently recorded, as narrative registered professional nurse progress notes, in the patient's medical record. The practice of "charting by exception" is expressly prohibited.

Section 15-5. Patient assessment.

(a) Patient assessment requires (i) direct observation of the patient's signs and symptoms of illness, reaction to treatment, behavior and physical condition, and (ii) interpretation of information obtained from the patient and others, including other care givers as applicable.

(b) Only a direct care registered professional nurse who is physically present with the patient is authorized to perform patient assessments. A licensed practical nurse may assist a direct care registered professional nurse in data collection.

Section 15-10. Determining nursing care needs of patients.

(a) The nursing care needs of each individual patient shall be determined by a direct care registered professional nurse
through the process of ongoing comprehensive nursing assessments, nursing diagnosis, and formulation and adjustment of nursing care plans.

(b) The prediction of individual patient nursing care needs for prospective assignment of direct care registered professional nurses shall be based on individual comprehensive nursing assessments by the direct care registered professional nurse assigned to each patient and in accordance with Article 10.

Section 15-15. Independent professional judgment.

(a) Competent performance of the essential functions of a direct care registered professional nurse requires the exercise of independent professional judgment in the exclusive interests of the patient. The exercise of such independent professional judgment, unencumbered by the commercial or revenue-generation priorities of a hospital, LTAC hospital, or ambulatory surgical treatment center or other employing entity of a direct care registered professional nurse, is necessary to assure safe, therapeutic, effective and competent treatment of hospital patients and is essential to protect the health and safety of the people of Illinois.

(b) The exercise of independent professional judgment by a direct care registered professional nurse in the performance of the essential functions, as described in paragraphs (1) through (3) of subsection (a) of Section 15-1 and in the Nurse Practice
Act, shall be provided in the exclusive interests of the patient and shall not, for any purpose, be considered, relied upon, or represented as a job function, authority, responsibility, or activity undertaken in any respect for the purpose of serving the business, commercial, operational, or other institutional interests of the hospital.

(c) No hospital, LTAC hospital, ambulatory surgical treatment center, or other health care institution shall utilize technology that (1) limits a direct care registered professional nurse in performing functions that are part of the nursing process, including full exercise of independent professional judgment in assessment, planning, implementation and evaluation of care or (2) limits a direct care registered professional nurse in acting as a patient advocate in the exclusive interests of the patient. Technology shall not be skill-degrading, interfere with a direct care registered professional nurse's provision of individualized patient care, or override a direct care registered professional nurse's independent professional judgment.

ARTICLE 20. PATIENT ADVOCACY

Section 20-1. Professional obligation. A registered professional nurse has the obligation and right to act as a patient's advocate, as circumstances require, including, without limitation:
(1) ensuring that patients have an opportunity to make informed decisions regarding their health care before the care is provided;

(2) initiating action to improve the patient's health care or to change decisions or activities which, in the professional judgment of the registered professional nurse, are against the interests or wishes of the patient;

(3) initiating action to improve health care practices in the hospital, including providing professional input on the methods of patient care documentation and the number of ancillary and support staff who should be available and present to supplement the work of registered professional nurses, such as physical therapists, respiratory therapists, social workers, and patient lifting, transportation, housekeeping, and security personnel;

(4) advocating and monitoring activities to ensure hospital compliance with this Act to ensure that safe registered professional nurse staffing levels at the clinical unit or patient care level are implemented; and

(5) determining whether a health information technology program or tool displaces registered professional nurses from patient care, interferes with the nursing process, or otherwise compromises a registered professional nurse's professional judgment.

Section 20-5. Acceptance of patient care assignments. A
direct care registered professional nurse is always responsible for providing safe, therapeutic, and competent nursing care to assigned patients. Before accepting a patient assignment, a direct care registered professional nurse must have the necessary knowledge, judgment, skills, and ability to provide the required care. If a direct care is not, in the direct care registered professional nurse's professional judgment, clinically competent to perform the care required for a patient to be assigned for nursing care, she or he should not accept the patient care assignment. Such a refusal to accept a patient care assignment is an exercise of the direct care registered professional nurse's duty and right of patient advocacy.

ARTICLE 25. CIVIL PENALTIES

Section 25-1. Violations.

(a) A hospital, LTAC hospital, or ambulatory surgical treatment center found to have knowingly or willfully violated, or aided and abetted a violation of, any provision of this Act is subject to:

(1) enforcement action by the Department, including the use of injunctive relief available to force compliance with the Act or closure of the hospital; and

(2) a civil money penalty assessed by the Department of not more than $25,000 for each violation and an additional
$10,000 per shift for each clinical care unit or patient care area until the violation is corrected.

(b) The Attorney General shall enforce penalties imposed under this Section in the county in which the violation occurred.

(c) The penalties authorized under this Section are in addition to any other penalties that may be prescribed by law. Penalties collected under this Section shall be deposited into the General Revenue Fund.

ARTICLE 30. WHISTLEBLOWER PROTECTIONS

Section 30-1. Objection or refusal of assignment. A registered professional nurse may object to, or refuse to participate in, any activity, policy, practice, assignment, or task if:

(1) in good faith the nurse reasonably believes it to be a violation of the direct care registered professional nurse-to-patient rations under this Act; or

(2) the nurse is not prepared by education, training, or experience to fulfill the assignment without compromising the safety or any patient or jeopardizing the license of the nurse.

Section 30-5. Protections for whistleblowers.

(a) A hospital, LTAC hospital, or ambulatory surgical treatment center shall not retaliate, discriminate, or
otherwise take adverse action in any manner with respect to any aspect of a nurse's employment, including discharge, promotion, compensation, or terms, conditions, or privileges of employment, based on the nurse's refusal to complete an assignment as described in Section 30-1.

(b) A hospital, LTAC hospital, or ambulatory surgical treatment center shall not file a complaint against a registered professional nurse with the board of nursing based on the nurse's refusal to complete an assignment as described in Section 30-1.

(c) A hospital, LTAC hospital, or ambulatory surgical treatment center shall not retaliate, discriminate, or otherwise take adverse action in any manner against any person or with respect to any aspect of a nurse's employment, including discharge, promotion, compensation, or terms, conditions, or privileges of employment, based on such nurse's or person's opposition to any hospital policy, practice, or action that such nurse in good faith believes violates this Act.

(d) A hospital, LTAC hospital, or ambulatory surgical treatment centers shall not retaliate, discriminate, or otherwise take adverse action against any patient, employee, or contract employee of the hospital, or any other individual, on the basis that such individual, in good faith, individually or in conjunction with another person or persons, has presented a grievance or complaint, or has initiated or cooperated in any
investigation or proceeding of any governmental entity, regulatory agency, or private accreditation body, made a civil claim or demand, or filed an action relating to the care, services, or conditions of the hospital or of any affiliated or related facilities.

(e) A hospital, LTAC hospital, or ambulatory surgical treatment centers, or an individual representing a hospital, LTAC hospital, and ambulatory surgical treatment center, shall not do either of the following:

(1) Interfere with, restrain, or deny the exercise of, or attempt to deny the exercise of, a right conferred this Act;

(2) Coerce or intimidate any individual regarding the exercise of, or an attempt to exercise, a right conferred by this Act.

ARTICLE 90. AMENDATORY PROVISIONS

Section 90-1. The Hospital Licensing Act is amended by adding Section 2.5 as follows:

(210 ILCS 85/2.5 new)

Sec. 2.5. Relationship to Hospital Patient Protection Act. In the case of a conflict between a provision of the Hospital Licensing Act and a provision of the Hospital Patient Protection Act, the Hospital Patient Protection Act shall
Section 90-5. The Nurse Practice Act is amended by adding Section 50-17 as follows:

(225 ILCS 65/50-17 new)

Sec. 50-17. Relationship to Hospital Patient Protection Act. In the case of a conflict between a provision of the Nurse Practice Act and a provision of the Hospital Patient Protection Act, the Hospital Patient Protection Act shall control.

ARTICLE 99. EFFECTIVE DATE

Section 99. Effective date. This Act takes effect January 1, 2020.