

**SENATE . . . . . No.**

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**The Commonwealth of Massachusetts**

PRESENTED BY:

**Richard T. Moore**

*To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:*

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

**An Act to Promote the Nursing Profession and Promote Safe Patient Care.**

PETITION OF:

NAME:

Richard T. Moore

DISTRICT/ADDRESS:

Worcester and Norfolk

[SIMILAR MATTER FILED IN PREVIOUS SESSION  
SEE SENATE, NO. S01244 OF 2007-2008.]

## The Commonwealth of Massachusetts

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In the Year Two Thousand and Nine

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### AN ACT TO PROMOTE THE NURSING PROFESSION AND PROMOTE SAFE PATIENT CARE.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1           SECTION 1. Chapter 6A of the General Laws is hereby amended by inserting after  
2 section 16G the following section:—

3           Section 16H. A nursing advisory board is hereby established within, but not subject to,  
4 the control of the executive office of health and human services. The advisory board shall  
5 consist of 8 members who shall have a demonstrated background in nursing or health services  
6 research and who shall represent the continuum of health care settings and services, including,  
7 but not limited to, long-term institutional care, acute care, community-based care, public health,  
8 school care and higher education in nursing. The members shall be appointed by the governor  
9 from a list of 10 individuals recommended by the board of registration in nursing and a list of 10  
10 persons recommended by the Massachusetts Center for Nursing, Inc. The advisory board shall  
11 elect a chair from among its members and adopt by-laws for its proceedings. Each of the 8

12 members appointed by the governor shall serve for a term of 3 years, except that in making his  
13 initial appointments, the governor shall appoint 2 members to serve for terms of 1 year, 2  
14 members to serve for terms of 2 years and 4 members to serve for terms of 3 years. Persons may  
15 be appointed to fill vacancies who shall serve for the unexpired term. No member shall serve  
16 more than 2 consecutive full terms.

17 The advisory board shall:

18 (a) advise the governor and the general court on matters related to the practice of nursing,  
19 including the shortage of nurses across the commonwealth in all settings and services, including  
20 long-term institutional care, acute care, community-based care, public health, school care and  
21 higher education in nursing;

22 (b) develop a research agenda, apply for federal and private research grants, and  
23 commission and fund research projects to fulfill the agenda;

24 (c) recommend policy initiatives to the governor and the general court;

25 (d) prepare an annual report and disseminate the report to the governor, the general court,  
26 the secretary of health and human services, the director of labor and workforce development and  
27 the commissioner of public health; and

28 (e) consider the use of current government resources, including, but not limited to, the  
29 Workforce Training Fund as may be provided for in the general appropriations act. Any funds  
30 allocated to the advisory board shall be deposited with the state treasurer and may be expended  
31 by the advisory board in accordance with the conditions of the grants, without specific  
32 appropriation. The advisory board may expend for services and other expenses any amounts that

33 the general court may appropriate. The advisory board shall conduct at least 1 public hearing  
34 during each year.

35 SECTION 2. Chapter 10 of the General Laws is hereby amended by adding the following  
36 section:-

37 Section 75. There shall be established and set up on the books of the commonwealth a  
38 separate fund, to be known as the Clara Barton Nursing Excellence Trust Fund. The fund shall  
39 consist of all revenues from public and private sources as appropriations, gifts, grants or  
40 donations, and from the federal government as reimbursements, grants-in-aid or other receipts to  
41 further the purposes of the fund in accordance with the provisions of sections 19F to 19K,  
42 inclusive, of chapter 15A, and any interest or investment earnings on such revenues. The  
43 revenues credited to the fund under this section shall remain in the fund and shall be expended,  
44 without further appropriation, for applications pursuant to said sections 19F to 19K, inclusive, of  
45 said chapter 15A. The state treasurer shall deposit and invest monies in the fund in accordance  
46 with the sections 34, 34A and 38 of chapter 29 in such a manner as to secure the highest rate of  
47 return consistent with the safety of the fund. The fund shall be expended only for the purposes  
48 stated in said sections 19F to 19K, inclusive, of said chapter 15A, at the direction of the  
49 chancellor of the system of public higher education. On February 1 of each year, the state  
50 treasurer shall notify the chancellor of any projected interest and investment earnings available  
51 for expenditure from the fund for each fiscal year.

52 SECTION 3. Chapter 15A of the General Laws is hereby amended by inserting after section 19E  
53 the following 6 sections:-

54 Section 19F. The department of higher education shall, subject to appropriation, establish a  
55 nursing student loan repayment program, to be known as the Clara Barton Nursing Loan  
56 Repayment Program, for the purpose of encouraging existing nurses or nurse student graduates  
57 committed to becoming clinical instructors or nursing faculty to teach nursing within the  
58 commonwealth by providing financial assistance for the repayment of qualified education loans  
59 and a nursing faculty position payment program, to be known as the Clara Barton Nurse  
60 Educators Assistance Program, by providing compensation to health care facilities to cover nurse  
61 scheduled work time spent teaching, as further explained in this section. The department shall  
62 adopt guidelines governing the implementation of the programs, which shall include, but need  
63 not be limited to, the following:

64 (1) eligibility for the loan repayment program shall be limited to persons who have  
65 graduated in the top 25 percent of their undergraduate or graduate class, as certified by the  
66 college, university or school of nursing attended by such applicant, or who are otherwise  
67 qualified;

68 (2) eligibility for the loan repayment program shall be limited to persons licensed to  
69 practice nursing in the commonwealth or entering the nursing profession after September 1,  
70 2009, and eligibility for the nurse educators assistance program shall be limited to persons  
71 entering the teaching of nursing profession at a college, university or school of nursing within the  
72 commonwealth after that date;

73 (3) the commonwealth shall repay a participant's student loan at a rate not to exceed \$200  
74 per month for a period not to exceed 48 months; provided, however, that participants who work

75 less than full time shall receive loan repayment amounts in direct proportion to the percentage of  
76 full time worked;

77 (4) repayment shall be made to the participant annually upon the presentation by the  
78 participant of satisfactory evidence of payments under the loan;

79 (5) payments by the commonwealth shall cover only loan payments made by a participant  
80 during the months when the participant is employed as a nurse in facilities including, but not  
81 limited to, acute care hospitals, long-term care or chronic disease hospitals, acute inpatient  
82 rehabilitation hospitals, public health hospitals, psychiatric and mental health clinics or hospitals,  
83 community or neighborhood health centers, rehabilitation centers or nursing homes, or as a home  
84 health, school or public health nurse in the commonwealth, or is employed to teach nursing at a  
85 college, university, or school of nursing in the commonwealth.

86 (6) Payments by the commonwealth shall not commence until a participant has been  
87 employed as a nurse in the commonwealth, or as a teacher of nursing at a college, university or  
88 school of nursing in the commonwealth, for at least 1 year;

89 (7) Participants shall be employed as a nurse in the commonwealth, or as a teacher of  
90 nursing at a college, university or school of nursing in the commonwealth, for a minimum of 4  
91 years during the loan repayment period, or reimburse the commonwealth for the expense  
92 incurred during the repayment period;

93 (8) in the case of those employed as nurses, the department may limit the program to  
94 those who work in communities designated by the department of public health, in consultation  
95 with the United States Department of Health and Human Services and the Center for Health  
96 Professions at Worcester State College, as underserved communities; and

97 (9) the program shall set forth an affirmative action policy and specific annual affirmative  
98 action goals and the department shall annually publish a report detailing its efforts to publicize  
99 the loan repayment program in order to advance the goals of this affirmative action policy and its  
100 success in meeting those goals.

101 For the purposes of this section, "qualified education loan" shall mean any indebtedness  
102 including interest on indebtedness incurred to pay tuition or other direct expenses incurred in  
103 connection with the pursuit of a practical or diploma nursing program or an associate's,  
104 baccalaureate or graduate degree by an applicant, but shall be limited to any loan which was or is  
105 administered by the financial aid office of a practical or diploma nursing program, 2-year or 4-  
106 year college, university or school of nursing at which the applicant was enrolled as a practical or  
107 diploma nursing school student, or as an undergraduate or graduate student, and which has been  
108 secured through a state or federal student loan program, or which was or is administered by a  
109 commercial or institutional lender.

110 Section 19G. The department of higher education, subject to appropriation, shall establish  
111 an expert nursing corps program, to be known as the Clara Barton Expert Nursing Corps  
112 Program, for the purpose of building a group of recognized nurses of high achievement in the  
113 profession who shall serve to mentor incoming or novice nurses and to further the goals of the  
114 nursing profession. The department shall adopt guidelines governing the implementation of the  
115 program. These guidelines shall include, but need not be limited to, the following provisions:

116 (1) the department may select for participation in the program expert nurses who have  
117 obtained specialty, modular or advanced practice certification from the American Nurses  
118 Credentialing Center, who remain in good standing with the board of registration in nursing, who

119 are current on their continuing education units, and who agree to mentor incoming or novice  
120 nurses; provided, however, that the department may develop and include alternatives to  
121 certification by the such American Nurses Credentialing Center program if those alternatives  
122 maintain equivalent or higher standards of excellence in the practice of nursing;

123 (2) the department, subject to appropriation, may provide expert nurses with partial or  
124 full reimbursement for the assessment costs of the American Nurses Credentialing Center  
125 certification and shall provide expert nurses with ongoing salary bonuses that shall be limited to  
126 \$5,000 per year not to exceed 5 years; provided, however, that such expert nurses shall remain  
127 in good standing with the board of registration in nursing, shall be employed in nursing in the  
128 commonwealth, and continue to mentor incoming or novice nurses; and provided further that the  
129 department shall require evaluation on an annual basis of the efficacy of the incentives provided  
130 to participants in the expert nurse mentoring program;

131 (3) the department may authorize grants, in addition to the bonuses paid to expert nurse,  
132 to the health care facility, school district, local health agency, home health agency or nursing  
133 home in the commonwealth that employees the expert nurse to facilitate time for the expert nurse  
134 to engage in mentoring activity; to increase the number of clinical facilities or to allow for the  
135 hiring of more nurse faculty; provided however, that the health care facility, school district, local  
136 health agency, home health agency or nursing home in the commonwealth shall maintain the  
137 expert nurse's salary irrespective of the expert nurse's salary bonus;

138 (4) the department shall set forth an outreach plan to attract underrepresented populations  
139 and nurse specialists in the nursing profession in areas which are designated by the department of

140 public health, in consultation with the United States Department of Health and Human Services,  
141 as underserved communities;

142 (5) the department, subject to appropriation, may provide experienced nurses who have  
143 graduate degrees and such courses in education as the department may determine, who have  
144 agreed to teach in a nursing education program in the commonwealth with ongoing salary  
145 bonuses to reasonably compensate for the difference between clinical nursing salaries and  
146 nursing faculty salaries; provided, however, that these ongoing salary bonuses for these nurse  
147 scholars shall be limited to \$25,000 per year and shall not exceed 10 years for nursing faculty  
148 who carry a full teaching load as defined by the institution; provided further, that such nurse  
149 scholars shall remain in good standing with the board of registration in nursing, shall be  
150 employed in nursing education in the commonwealth, and shall continue to educate nurses; and  
151 provided further, that an institution of higher education that employs a nurse scholar shall  
152 maintain the nurse scholar's salary at a professional level irrespective of the expert nurse's salary  
153 bonus.

154 Section 19H. The department of higher education shall make available grants to  
155 institutions of higher education and health care institutions in the commonwealth for the purpose  
156 of fostering partnerships between higher education institutions and clinical agencies that promote  
157 the recruitment and retention of nurses. These grants may also be made available to such  
158 institutions for the purpose of establishing and maintaining nurse mentoring or nursing internship  
159 programs. The department shall adopt guidelines governing the implementation of this section.

160 Section 19I. The department of higher education shall, subject to appropriation, to  
161 establish a scholarship program, to be known as the Clara Barton Scholarship Program, to

162 provide students in approved colleges, universities and schools of nursing in the Commonwealth  
163 with scholarships for tuition and fees for the purpose of encouraging outstanding Massachusetts'  
164 students to work as nurses in facilities including, but not limited to, acute care hospitals,  
165 psychiatric and mental health clinics or hospitals, community or neighborhood health centers or  
166 long-term care hospitals, inpatient rehabilitation facilities and other rehabilitation centers,  
167 nursing homes, or as a home health, school or public health nurse in the commonwealth, or to  
168 teach nursing in colleges, universities or schools of nursing in the commonwealth. The  
169 department shall adopt guidelines governing the implementation of the program. Colleges,  
170 universities and schools of nursing in the commonwealth may administer the Clara Barton  
171 Scholarship Program and select recipients, in accordance with these guidelines. Scholarships  
172 may be made available to full or part-time matriculating students in courses of study leading to a  
173 degree in nursing or the teaching of nursing. Recipients shall be residents of the commonwealth  
174 and outstanding prospects for the nursing profession based on objective measures such as  
175 leadership skills, clinical knowledge, class rank, test scores and grade point average, and such  
176 other criteria as the department may determine, such as income need. In any given year, the  
177 department may target awards to students from geographic and nurse specialty areas in the  
178 commonwealth determined by the department of public health, in consultation with the United  
179 States Department of Health and Human Services, and the Center for Health Professions at  
180 Worcester State College, to be areas experiencing an acute shortage of nurses. A scholarship  
181 recipient attending a public or private institution of higher education in the commonwealth shall  
182 receive no more than a \$3,500 scholarship for each academic semester that he remains enrolled  
183 at such institution and remains in good standing. The names of recipients of such scholarships  
184 shall remain confidential unless the recipient waives this confidentiality in writing. The

185 department may also, subject to appropriation, provide a scholarship recipient with a housing  
186 voucher, in a form and manner as the department may determine, which shall be equal to but not  
187 more than \$200 per month, that may be utilized by the recipient to assist in paying housing costs,  
188 including rent or mortgage payments, while he is enrolled in good standing in the college,  
189 university or school of nursing.

190 The department, in coordination with the board of education and colleges, universities  
191 and schools of nursing in the commonwealth, shall aggressively market the existence of the  
192 program to high school students to encourage outstanding candidates to apply to nursing or the  
193 teaching of nursing programs in institutions of higher education in the commonwealth. This  
194 marketing shall focus on candidates who would otherwise not consider a career in nursing or the  
195 teaching of nursing. The department shall set forth an outreach plan to attract underrepresented  
196 populations to the nursing profession. Recipients shall be employed as nurses in the  
197 commonwealth, or as teachers of nursing at a college, university or school of nursing in the  
198 commonwealth, for a minimum of 3 years following graduation. A recipient who participates in  
199 the program but does not complete his college education within 7 years of entering college or  
200 who fails to complete his 3 year nursing commitment within 7 years after graduation from  
201 college or whose license to practice in the commonwealth is not maintained in good standing, or  
202 who fails to complete his 3-year teaching commitment within 7 years after graduation from  
203 college or from a graduate school, if such is required for teaching nursing at a college, university  
204 or school of nursing, shall be obligated to repay the commonwealth any tuition, fees and housing  
205 voucher payments advanced to him, and with interest as set by the department.

206 Section 19J. The department of higher education shall, subject to appropriation, develop a  
207 program to provide matching grants to any hospital that commits resources or personnel to nurse

208 education programs. The program shall provide a dollar-for-dollar match for any funds  
209 committed by a hospital to pay for nurse faculty positions in publicly-funded schools of nursing,  
210 including the costs of providing hospital personnel loaned to their schools of nursing.

211 Section 19K. The department of higher education shall, subject to appropriation,  
212 designate a portion of the Clara Barton Nursing Excellence Trust Fund, established in section 75  
213 of chapter 10, to be used for refresher courses and retraining at accredited schools of nursing for  
214 licensed registered nurses returning to bedside care after an absence of more than 1 year, in  
215 accordance with standards as shall be approved by the board of registration in nursing.

216

217 SECTION 4. Chapter 111 of the general laws, as appearing in the 2006 Official Edition, is  
218 hereby amended by inserting after section 56 the following 6 sections:-

219 Section 56A. In sections 56A to 56F, inclusive, the following words shall have the  
220 following meanings:

221 "Acuity model", an assessment tool selected and implemented by a hospital, as  
222 recommended by a nursing care committee, that assesses the complexity of patient care needs  
223 requiring professional nursing care and skills and aligns patient care needs and nursing skills  
224 consistent with professional nursing standards.

225 "Department", the department of public health.

226 "Direct patient care", care provided by a registered nurse with direct responsibility to  
227 oversee or carry out medical regimens or nursing care for 1 or more patients.

228           “Health care workforce”, personnel that have an effect upon the delivery of quality care  
229 to patients, including but not limited to, licensed practical nurses, unlicensed assistive personnel  
230 or other service, maintenance, clerical, professional or technical workers and other health care  
231 workers.

232           “Hospital”, a hospital licensed under section 51 of chapter 111, the teaching hospital of  
233 the University of Massachusetts medical school, a licensed private or state-owned and state-  
234 operated general acute care hospital, or an acute care unit within a state-operated facility;  
235 provided, however, that “hospital” shall not include a licensed non-acute care hospital classified  
236 as an inpatient rehabilitation facility, an inpatient psychiatric facility, an inpatient substance  
237 abuse facility, or a long term care hospital by the federal Centers for Medicare and Medicaid  
238 Services.

239           “Nurse”, a registered nurse licensed under section 74 of chapter 112 or a licensed  
240 practical nurse licensed under section 74A of said chapter 112.

241           “Nursing care committee”, an existing or newly created hospital-wide committee of  
242 nurses whose functions, in part or in whole, contribute to the development, recommendation and  
243 review of the hospital’s nurse staffing plan established pursuant to subsection (d).

244           “Nursing care hours”, the number of hours worked by nursing staff that have direct  
245 patient care responsibilities for more than 50 per cent of their shift.

246           “On-call”, time spent by a nurse who is not currently working on the premises of the  
247 hospital, and who is either compensated for availability or has agreed as a condition of  
248 employment to be available to return to the hospital on short notice if the need arises.

249 "Overtime", the hours worked by a nurse to deliver patient care, beyond the  
250 predetermined and regularly scheduled hours.

251 "Patient days", the daily average of the number of patients on the unit, as counted at least  
252 once during each shift for 24 hours.

253 "Staffing plan", a written hospital-wide staffing plan for guiding the assignment of  
254 patient care nursing staff based on multiple nurse and patient considerations that yield minimum  
255 staffing levels for inpatient care units and the adopted acuity model aligning patient care needs  
256 with nursing skills required for quality patient care consistent with professional nursing  
257 standards.

258 Section 56B. (a) Every acute care hospital shall implement a staffing plan, based on the  
259 recommendation of a nursing care committee, which provides for minimum direct care  
260 professional registered nurse-to-patient staffing needs for each inpatient care unit. The staffing  
261 plan shall include, but not be limited to, the following:

262 (1) Consideration of the complexity of complete care, assessment on patient admission,  
263 volume of patient admissions, discharges and transfers, evaluation of progress of a patient's  
264 health status, ongoing physical assessments, planning for a patient's discharge, assessment after a  
265 change in patient condition and assessment of the need for patient referrals.

266 (2) the complexity of clinical professional nursing judgment needed to design and  
267 implement a patient's nursing care plan, the need for specialized equipment and technology, the  
268 skill mix of other personnel providing or supporting direct patient care, and involvement in  
269 quality improvement activities, professional preparation and experience.

270 (3) patient acuity and the number of patients for whom care is being provided;

271 (4) the requirement that ongoing assessments of a unit's patient acuity levels and nursing  
272 staff needed shall be routinely made by the unit nurse manager or his designee;

273 (5) the identification of additional registered nurses available for direct patient care when  
274 patients' unexpected needs exceed the planned workload for direct care staff; and

275 (6) mechanisms for the appropriate adjustments of staffing levels that may be required  
276 during initial orientation and training periods for nurses assigned to new units.

277 (b) In order to provide staffing flexibility to meet patient needs, every acute care hospital  
278 shall identify an acuity model for adjusting the staffing plan for each inpatient care unit.

279 (c) The written staffing plan shall be posted in a conspicuous and accessible location for  
280 both patients and direct care staff and shall be posted in electronic format, as determined by  
281 regulation promulgated by the department. The plan shall be published on the department  
282 website and available to the public.

283 (d) Every acute care hospital shall have a nursing care committee. A hospital shall  
284 appoint members of a committee whereby membership limited to the committee's hospital's  
285 employees and at least 50 per cent of its members shall be registered nurses providing direct  
286 patient care. A nursing care committee's recommendations shall be given significant regard and  
287 weight in the hospital's adoption and implementation of a staffing plan. A nursing care  
288 committee shall recommend a plan for the hospital based on the principles from the staffing  
289 components set forth in subsection (c) and shall provide input and feedback on the following:

290 (i) selection, implementation and evaluation of minimum staffing levels for inpatient  
291 care units;

292 (ii) selection, implementation and evaluation of an acuity model to provide staffing  
293 flexibility that aligns changing patient acuity with nursing skills required;

294 (iii) Selection, implementation and evaluation of a staffing plan incorporating the items  
295 described in clauses (i) and (ii); and

296 .(iv) nurse-to-patient staffing guidelines for all inpatient areas; and

297 (v) current acuity tools and measures in use.

298 (e) A nursing care committee shall address the items described in subsections (b) through  
299 (e) semi-annually.

300 (f) The implementation of a staffing plan shall not result in the understaffing or  
301 reductions in staffing levels of the health care workforce.

302 (g) Nothing in this section shall be construed to limit, alter or modify the terms,  
303 conditions or provisions of a collective bargaining agreement entered into by the hospital.

304 (h) A staffing plan shall be approved by the hospital governing board prior to its filing  
305 with the department.

306 (j) A hospital shall file its plan with the department not later than 2 weeks after the start  
307 of the hospital's fiscal year.

308 (j) Each hospital shall include with its filing an aggregate review of significant variations  
309 between its actual staffing for the preceding hospital fiscal year staffing plan filed with the

310 department for that preceding year, and, if significant variations occurred, a description of the  
311 actions taken by the hospital..

312 (k) Current nursing staff schedules shall be available upon request at each patient care  
313 unit. Each schedule shall list the daily assigned nursing personnel and average daily census for  
314 the unit. The actual nurse staffing assignment roster for each patient care unit shall be available  
315 to the department upon request. Upon a roster's expiration, the hospital shall retain the roster for  
316 5 years from the date of its expiration.

317 (l) The department shall establish, maintain and advertise a toll-free telephone line and  
318 website for nurses, nursing support staff, patients and patient family members to report alleged  
319 violations of a staffing plan. The department shall promulgate regulations for the  
320 implementation of these services and for investigating any alleged violation registered through  
321 these services.

322 Section 56C. (a) If a hospital fails to file its staffing plan within the time required by law, the  
323 department shall give immediate notice by mail, postage prepaid, to the hospital of its default. If  
324 the hospital fails to file a report within 21 days after such notice of default has been received, the  
325 department shall impose a late fine of \$1,000 per day. The hospital may request an  
326 administrative review, in writing, within 15 days of the date it receives notice of the imposition  
327 of a late fine by the department. The request shall state the reasons why the hospital considers  
328 the imposition of the late fine to be incorrect and shall be accompanied by any supporting  
329 evidence and arguments. The department shall notify the hospital, in writing, of the results of  
330 the administrative review within 20 days of receipt of a request for review. Failure of the  
331 department to respond within that time shall be considered confirmation of the imposition of the

332 late fine. The department may require a hospital to resubmit a staffing plan if the plan fails to  
333 provide the information required and shall, by regulation, establish an administrative fee for  
334 review of staffing plans and for review of any required resubmission of staffing plans. The  
335 deadlines and procedures established by the department for a resubmission of a staffing plan,  
336 shall apply to late re-submission, and subsequent annual submissions. Any late fines collected  
337 by the department shall be deposited in the Clara Barton Nursing Excellence Trust Fund  
338 established pursuant to Section 75 of Chapter 10.

339 (b) If the department determines that there is an apparent pattern of failure by a hospital  
340 to maintain or adhere to its filed staffing plan, the hospital may be subject to an inquiry by the  
341 department to determine the causes of the apparent pattern. If, after such inquiry, the department  
342 determines that an official investigation is appropriate and after issuance of written notification  
343 to the hospital, the department may conduct an investigation. Upon completion of the  
344 investigation and a finding of noncompliance, the department shall give written notification to  
345 the hospital about the manner in which the hospital failed to comply with this section. Hospitals  
346 shall be granted due process during the investigation, which shall include the following: (1)  
347 notice to hospitals that are noncompliant with section 56B; (2) the opportunity for hospitals to  
348 submit to the department, through written clarification, justifications for failure to comply with  
349 said section 56B; (3) corrective measures to be taken, if any, as determined by the department  
350 based upon such justifications which may include: (i) an official notice of failure to comply; (ii)  
351 the imposition of additional reporting and monitoring requirements; (iii) the imposition of fines,  
352 not to exceed \$3,000 for each finding of noncompliance; (iii) revocation of the facility's license  
353 or registration; and (iv) the closing of the particular unit that is noncompliant.

354 (c) A facility may appeal a measure or fine sought to be enforced by the department  
355 hereunder to the division of administrative law appeals and any such measure or fine shall not be  
356 enforced by the department until final adjudication by the division.

357 (d) The department may conduct random audits of a hospital's nurse staffing plan to  
358 ensure that its plan conforms to section 56B.

359 (e) The department shall promulgate regulations consistent with this section.

360 Section 56D. (a) Hospitals shall include in their quality improvement programs a process  
361 to collect, monitor and evaluate patient care through the statewide use of evidence-based nurse-  
362 sensitive performance measures, to be selected by the department. The department, in  
363 consultation with the Betsy Lehman center for patient safety and medical error reduction, the  
364 health care quality and cost council and the Massachusetts Hospital Association, Inc., shall select  
365 evidence-based nurse-sensitive performance measures from the nationally-recognized measures  
366 endorsed by the National Quality Forum and shall include, but not be limited to: patient falls,  
367 pressure ulcers, physical or sexual assault, pain management, peripheral IV infiltration; staff mix  
368 of registered nurses, licensed practical nurses, nurse assistants and unlicensed assistive  
369 personnel; nursing care hours provided per patient day, registered nurse education/certification,  
370 and an registered nurse satisfaction survey. The department shall develop a methodology to  
371 adjust these nursing care hours per patient day to account for differences in patient  
372 characteristics. The department shall develop a uniform format for hospitals to quarterly report  
373 on the selected performance measures to the department. The department shall annually report  
374 to the general public hospital-specific performance measure data, aggregated industry trends and  
375 best practices developed from these reports.

376 (b) The department shall develop a risk-adjusted methodology to compare patient  
377 outcomes using nurse sensitive quality measures as related to registered nursing care per patient  
378 day in order to rank nursing care among all acute care hospitals as reported in the quarterly  
379 reports submitted pursuant to this section and shall provide these comparative rankings to the  
380 health care quality and cost council for public posting in conjunction with other hospital quality  
381 measures. The department shall not disclose any information to the public unless the  
382 information has been reviewed, adjusted, and validated according to the following process:

383 1. The department shall organize an advisory committee, including representatives from the  
384 department, public and private hospitals, direct care nursing staff, nursing leaders, physicians,  
385 academic researchers, consumers, health insurance companies, organized labor and organizations  
386 representing hospitals and physicians. The advisory committee must be meaningfully involved  
387 in the development of all aspects of the department's methodology for collecting, analyzing and  
388 disclosing the information collected under this section, including collection methods, formatting,  
389 and methods and means for release and dissemination.

390 2. (ii) The entire methodology for collecting and analyzing the data shall be disclosed to all  
391 relevant organizations and to all hospitals that are the subject of any information to be made  
392 available to the public before any public disclosure of such information.

393 3. (iii) Data collection and analytical methodologies shall be used that meet accepted standards  
394 of validity and reliability before any information is made available to the public.

395 4. (iv) The limitations of the data sources and analytic methodologies used to develop  
396 comparative hospital information shall be clearly identified and acknowledged, including but not  
397 limited to, the appropriate and inappropriate uses of the data.

398 5. (v) To the greatest extent possible, comparative hospital information initiatives shall use  
399 standard-based norms derived from widely accepted provider-developed practice guidelines.

400 6. (vi) Comparative hospital information and other information that the department has  
401 compiled regarding hospitals shall be shared with the hospitals under review prior to public  
402 dissemination of such information and these hospitals shall have 30 days to make corrections and  
403 to add explanatory comments about the information before the publication.

404 7. (vii) Comparisons among hospitals shall adjust for patient case mix and other relevant risk  
405 factors and control for provider peer groups, when appropriate.

406 8. (viii) Effective safeguards to protect against the unauthorized use or disclosure of hospital  
407 information shall be developed and implemented.

408 9. (ix) Effective safeguards to protect against the dissemination of inconsistent, incomplete,  
409 invalid, inaccurate or subjective hospital data shall be developed and implemented.

410 10. (x) The quality and accuracy of hospital information reported under this section and its data  
411 collection, analysis, and dissemination methodologies shall be evaluated regularly.

412 11. (xi) Only the most basic identifying information from mandatory reports shall be used, and  
413 information identifying a patient, employee, or licensed professional shall not be released. None  
414 of the information the department discloses to the public under this section may be used to  
415 establish a standard of care in a private civil action.

416 Section 56E. The department shall establish minimum patient care performance  
417 benchmarks for all hospitals based on the evidence-based nurse-sensitive measures collected  
418 pursuant to section 56D. The minimum benchmarks shall be based on national and regional

419 quality measurements, further adjusted for hospitals with fewer than 100 acute care licensed  
420 beds, and shall be developed in consultation with the Betsy Lehman center for patient safety and  
421 medical error reduction, the health care quality and cost council and the Massachusetts Hospital  
422 Association, Inc. A hospital that fails to meet these minimum patient performance benchmarks  
423 shall be required by the department to implement a remedial plan design to improve patient care.  
424 The plan shall incorporate evidence-based measures and strategies for improving nurse sensitive  
425 patient outcome measures which may include specific registered nurse to patient limits, if, in the  
426 opinion of the department, such staffing limits are needed to improve patient care safety and  
427 health care quality. The setting of nurse patient limits for registered nurses shall not result in the  
428 understaffing or reductions in staffing levels of the health care workforce.

429           Section 56F. (a) A hospital shall not require or permit a nurse to work more than 12  
430 hours in any given shift or to exceed 16 hours in a 24 hour period. A nurse may not be  
431 disciplined, dismissed or discharged for refusing to work beyond the hours specified in this  
432 paragraph. A nurse who works 12 consecutive hours in a shift shall be given at least 8 hours off  
433 from any work between shifts. For the purposes of this paragraph, it shall not be the  
434 responsibility of the employer to ensure that a nurse has not violated the limitation of hours  
435 worked as specified in this section except for those hours worked in the employment of the  
436 employer. Nurses shall solely be responsible for certifying with the board of registration in  
437 nursing compliance with the provisions of this subsection during their applicable licensure  
438 renewal period.

439 (b)A hospital shall be limited to using mandatory overtime for emergency situations where the  
440 safety of a patient requires its use and when there is no reasonable alternative. Whenever a nurse  
441 is required to work mandatory overtime, the hospital shall document, in an aggregated manner,

442 such use in the annual nurse staffing plan as filed with the department pursuant to Chapter 111,  
443 Section 56A.

444 (c) Nothing in this section shall be construed to limit, alter or modify the terms,  
445 conditions or provisions of a collective bargaining agreement entered into by the hospital.

446 SECTION 5. Notwithstanding any general or special law to the contrary, the secretary of  
447 administration and finance, in consultation with the secretary of health and human services, shall  
448 make an investigation and study of all state agencies or quasi-state agencies to determine the  
449 efficacy of existing programs related to health care workforce development and shall file a report  
450 with the general court by June 30, 2010 with recommendations for the development of new or  
451 redesigned programs to create a pathway for an enhanced health care workforce that shall be  
452 needed to adequately care for the people of the Commonwealth by 2020. The investigation and  
453 study shall include, but not be limited to, identification of ways to increase the number and  
454 diversity of people choosing health care occupations and to increase retention rates among  
455 current health care workers in the commonwealth, and recommend actions for measures to  
456 coordinate solutions to health care worker shortage in the commonwealth as determined by the  
457 department of public health.

458 SECTION 6. Notwithstanding any general or special law to the contrary, the department of  
459 higher education, in collaboration with the department of labor and workforce development, the  
460 board of registration in nursing, the nursing advisory board established pursuant to section 16H  
461 of chapter 6A of the General Laws, and the Massachusetts Center for Nursing, Inc., and the nurse  
462 scholar program established pursuant to section 19F of chapter 15, shall make an investigation  
463 and study of the nurse faculty shortage in the commonwealth and file a report back with to the

464 clerks of the senate and house of representatives by June 30, 2010 with recommendations to  
465 enhance the nurse faculty pipeline within the commonwealth. The investigation and study shall  
466 include, but not be limited to, the collection and analysis of nursing data, including: school  
467 capacity data including numbers of doctoral and masters prepared faculty; budgeted and vacant  
468 positions; projections on intentions to retire; data on the number of students who have been  
469 turned away or are on waiting lists due to the shortage of budgeted faculty positions; vacant  
470 faculty positions; the capability of both undergraduate and graduate schools to develop nursing  
471 programs based on the number of qualified undergraduate or graduate students interested in  
472 nursing and the number of available faculty to develop a nursing program, or lack of clinical  
473 placement sites; the supply of masters and doctoral prepared nurses in the commonwealth who  
474 might be available to move into education positions; and the types and components of  
475 partnerships between schools and healthcare facilities focused on sharing of resources to enhance  
476 nursing education, research or leadership development. The investigation and analysis shall be  
477 conducted on a statewide basis and shall involve both publicly funded and private schools to  
478 provide comprehensive data on the current and future extent of the faculty shortage. The  
479 investigation shall also produce an analysis of the feasibility of developing a web-based,  
480 automated scheduling or staffing system for nursing units on a statewide basis that could be  
481 made available to health care facilities on a subscription basis.

482 SECTION 7. Notwithstanding any general or special law to the contrary, the executive office of  
483 housing and economic development, in collaboration with the board of education, the department  
484 of higher education, and the Massachusetts Hospital Association, Inc., shall develop a  
485 comprehensive statewide plan to promote healthcare professions to the general public. The plan  
486 shall include specific recommendations that various state agencies may act upon to further the

487 goals of enhancing public interest in health care professions, including but not limited to,  
488 methods targeting school-aged children and adults seeking a change in career and increasing the  
489 supply of health care workforce. The department shall complete this plan and file a copy with  
490 the clerks of the house of representatives and the senate not later than April 15, 2010.

491 SECTION 8. Notwithstanding any general or special law to the contrary, the executive office of  
492 health and human services and all agencies, departments and boards within this secretariat, the  
493 department of labor and workforce development, the department of higher education and any  
494 other state agency, board or department that collects data, conducts surveys or gathers  
495 information related to the practice of nursing, the supply of nursing workforce, the supply of  
496 nursing faculty or other nursing workforce issues shall regularly submit this data and information  
497 to the Massachusetts Center for Nursing, Inc.

498 SECTION 9. Notwithstanding any general or special to the contrary, the department of higher  
499 education shall establish an advisory committee consisting of 7 members who shall be  
500 professionals representing the nursing profession. At least 4 of the members shall be nursing  
501 educators from higher education institutions and the remaining members shall be nurses in  
502 practice. The advisory committee shall advise the department about the practice of nursing and  
503 how to implement this act in a manner that would best benefit the profession of nursing and  
504 fulfill the goals of recruiting and retaining people to the profession of nursing.

505 SECTION 10. Notwithstanding any general or special law the contrary, the department of public  
506 health shall develop guidelines for every licensed health care facility to implement an evidence-  
507 based policy for safe handling and movement of patients for all shifts and all patient care

508 personnel based on minimum ergonomic standards to reduce the injury rates associated with  
509 manual patient handling.

510 SECTION 11. There shall be a special commission for the purpose of studying the limitations of  
511 nursing hours in order to reduce fatigue and to improve patient care in hospitals. The  
512 commission shall review and study the most current studies and clinical evidence regarding  
513 limitation of nursing hours and the effect of such limitation on fatigue and patient safety. The  
514 commission shall also work with hospitals to identify the best practices to be used in  
515 implementing such limitations on nursing hours. The commission shall consist of the  
516 commissioner of public health, and a representative from each of the following: the  
517 Massachusetts Hospital Association, Inc., the Massachusetts Organization of Nurse Executives,  
518 Inc., the Massachusetts Nurses Association, the Massachusetts Association of Registered Nurses,  
519 Inc., the Massachusetts Medical Society, the Blue Cross and Blue Shield of Massachusetts, Inc.,  
520 the Massachusetts Association of Health Plans, the Associated Industries of Massachusetts, Inc.,  
521 the Massachusetts League of Community Health Centers, 3 teaching and 3 community Hospitals,  
522 as the department may determine, a chronic disease hospital, an inpatient rehabilitation hospital,  
523 the Massachusetts Coalition for the Prevention of Medical Errors, Inc., the Massachusetts  
524 Association of Colleges of Nursing, and, as the department may determine, a representative from  
525 community colleges, other nursing organizations, nursing schools and medical schools. The  
526 commission shall be jointly chaired by the chairs of the joint committee on health care financing.  
527 No action of the commission shall be considered official unless approved by a majority of its  
528 members. The commission shall file its final report and any recommendations for legislation and  
529 revisions to this act regarding limitation of nursing hours to reduce fatigue and improve patient  
530 care with the clerks of the senate and house of representatives, the house and senate committees

531 on ways and means, the house and senate chairs of the joint committee on health care financing,  
532 the house and senate chairs of the joint committee on public health, the Betsy Lehman center for  
533 patient safety and error reduction and with the governor not later than April 15, 2010.

534 SECTION 12. Section 4 of this act shall take effect on October 1, 2011.