



General Assembly

Amendment

January Session, 2023

LCO No. 8623



Offered by:

SEN. MARX, 20th Dist.

SEN. ANWAR, 3rd Dist.

To: Senate Bill No. 1067

File No. 465

Cal. No. 270

"AN ACT CONCERNING ADEQUATE AND SAFE HEALTH CARE STAFFING."

1 Strike everything after the enacting clause and substitute the
2 following in lieu thereof:

3 "Section 1. Section 19a-89e of the general statutes is repealed and the
4 following is substituted in lieu thereof (*Effective October 1, 2023*):

5 (a) For purposes of this section:

6 (1) "Department" means the Department of Public Health; [and]

7 (2) "Hospital" means an establishment for the lodging, care and
8 treatment of persons suffering from disease or other abnormal physical
9 or mental conditions and includes inpatient psychiatric services in
10 general hospitals;

11 (3) "Assistive personnel" means personnel who are not licensed by
12 the Department of Public Health and who engage in specifically

13 delegated patient care activities; and

14 (4) "Direct care registered nurse" means a registered nurse licensed
15 pursuant to chapter 378 whose primary responsibility is to provide
16 direct patient care.

17 (b) Each hospital licensed by the department pursuant to chapter
18 368v shall report, not later than January first and July first annually, to
19 the department on a prospective nurse staffing plan with a written
20 certification that the nurse staffing plan developed pursuant to
21 subsections (d) and (e) of this section is sufficient to provide adequate
22 and appropriate delivery of health care services to patients in the
23 ensuing period of licensure. Such plan shall promote a collaborative
24 practice in the hospital that enhances patient care and the level of
25 services provided by nurses and other members of the hospital's patient
26 care team.

27 (c) (1) Each hospital shall establish a dedicated hospital staffing
28 committee to assist in the preparation of the nurse staffing plan required
29 pursuant to subsection (b) of this section. [Registered] Direct care
30 registered nurses employed by the hospital [whose primary
31 responsibility is to provide direct patient care] shall account for not less
32 than [fifty] fifty-five per cent and an odd number of members of the
33 membership of each hospital's staffing committee. [In order to comply
34 with the requirement that a hospital establish a hospital staffing
35 committee, a hospital may utilize an existing committee or committees
36 to assist in the preparation of the nurse staffing plan, provided not less
37 than fifty per cent of the members of such existing committee or
38 committees are registered nurses employed by the hospital whose
39 primary responsibility is to provide direct patient care.] Each hospital's
40 staffing committee shall include broad-based representation across
41 hospital services. When registered nurses employed by the hospital are
42 members of a collective bargaining unit, a representative of the
43 collective bargaining unit shall select the direct care registered nurses
44 who shall be members of the hospital staffing committee, provided such
45 selection is not prohibited conduct under the National Labor Relations

46 Act, 29 USC 151 et seq., as amended from time to time, or 5 USC Chapter
47 71, as amended from time to time. Direct care registered nurses who are
48 not members of a collective bargaining unit shall be selected for the
49 committee through an election by their peers.

50 (2) Each hospital shall pay each employee who serves on the hospital
51 staffing committee such employee's regular rate of pay, including
52 differentials, for participation on the committee and consider, to the
53 extent possible by the hospital, the time such employee serves on the
54 committee as part of such employee's regularly scheduled work week.
55 Each hospital shall ensure that direct care registered nurses have
56 coverage to attend hospital staffing committee meetings.

57 (3) Each hospital staffing committee shall include two cochairpersons
58 who have direct patient care experience, one of whom is a direct care
59 registered nurse at the hospital who shall be elected by members of the
60 committee who are direct care registered nurses, and one of whom shall
61 be elected by members of the committee who are not direct care
62 registered nurses. The committee shall take minutes of every meeting,
63 make such minutes available to any member of the hospital staff upon
64 request and submit such minutes to the Department of Public Health
65 when requested by the department. A majority of the members of the
66 staffing committee shall constitute a quorum for the transaction of
67 staffing committee business. A decision made by the hospital staffing
68 committee shall be made by a vote of a majority of the members present
69 at the meeting. If a quorum of members present at a meeting comprises
70 an equal number of members who are direct care registered nurses and
71 members who are not direct care registered nurses, a sufficient number
72 of members who are not direct care registered nurses shall abstain from
73 voting to allow a majority of the voting members to consist of direct care
74 registered nurses.

75 (4) Each hospital shall notify each nurse on the nurse's date of hire,
76 and annually thereafter, about the hospital staffing committee,
77 including, but not limited to, the purpose of the committee, the criteria
78 and process for becoming a member of the committee, the hospital's

79 process for internal review of the nurse staffing plan and the hospital's
80 mechanism for obtaining input from direct care staff, including direct
81 care registered nurses and other members of the hospital's patient care
82 team, in the development of the nurse staffing plan.

83 (d) Each hospital staffing committee shall develop the nurse staffing
84 plan for the hospital. In developing such plan, the committee shall
85 evaluate the most recent research regarding patient outcomes, share
86 with hospital staff the procedures for communicating concerns to the
87 committee regarding such plan and staffing assignments and review all
88 reports regarding any such concerns and any objections or refusals by a
89 registered nurse to participate in a staffing assignment made pursuant
90 to subsection (h) of this section that were communicated to the
91 committee. Each hospital [, in collaboration with its staffing committee,
92 shall develop and] shall implement [to the best of its ability the
93 prospective nurse staffing] such plan. Such plan shall: (1) Include the
94 minimum professional skill mix for each patient care unit in the
95 hospital, including, but not limited to, inpatient services, critical care
96 and the emergency department; (2) identify the hospital's employment
97 practices concerning the use of temporary and traveling nurses; (3) set
98 forth the level of administrative staffing in each patient care unit of the
99 hospital that ensures direct care staff are not utilized for administrative
100 functions; (4) set forth the hospital's process for internal review of the
101 nurse staffing plan; and (5) include the hospital's mechanism of
102 obtaining input from direct care staff, including nurses and other
103 members of the hospital's patient care team, in the development of the
104 nurse staffing plan. In addition to the information described in
105 subdivisions (1) to (5), inclusive, of this subsection, nurse staffing plans
106 developed and implemented after January 1, 2016, shall include: (A) The
107 number of registered nurses providing direct patient care and the ratio
108 of patients to such registered nurses by patient care unit; (B) the number
109 of licensed practical nurses providing direct patient care and the ratio of
110 patients to such licensed practical nurses, by patient care unit; (C) the
111 number of assistive personnel providing direct patient care and the ratio
112 of patients to such assistive personnel, by patient care unit; (D) the

113 method used by the hospital to determine and adjust direct patient care
114 staffing levels; and (E) a description of [supporting] assistive personnel
115 [assisting] on each patient care unit. In addition to the information
116 described in subdivisions (1) to (5), inclusive, of this subsection and
117 subparagraphs (A) to (E), inclusive, of this subdivision, nurse staffing
118 plans developed and implemented after January 1, 2017, shall include:
119 (i) A description of any differences between the staffing levels described
120 in the staffing plan and actual staffing levels for each patient care unit;
121 and (ii) any actions the hospital intends to take to address such
122 differences or adjust staffing levels in future staffing plans.

123 (e) On and after January 1, 2024, in addition to the information
124 required pursuant to subsection (d) of this section, each nurse staffing
125 plan shall include:

126 (1) Information about any objections to or refusals to comply with the
127 nurse staffing plan by hospital staff that were communicated to the
128 hospital staffing committee;

129 (2) Measurements of and evidence to support successful
130 implementation of the nurse staffing plan;

131 (3) Retention, turnover and recruitment metrics for direct care
132 registered nursing staff, including, but not limited to, the turnover rate
133 per hospital unit during the preceding twelve months and the average
134 years of experience of permanent direct care registered nursing staff per
135 unit;

136 (4) The number of instances since the last nurse staffing plan was
137 submitted when the hospital was not in compliance with such plan,
138 including, but not limited to, the nurse staffing ratios set forth in such
139 plan, and a description of how and why such plan was not complied
140 with and plans to avoid future noncompliance with such plan; and

141 (5) Certification that the hospital and its hospital staffing committee
142 are meeting the requirements set forth in this section and a description
143 of how each requirement is being met.

144 (f) Each hospital shall post the nurse staffing plan developed and
145 adopted pursuant to subsections (d) and (e), inclusive, of this section on
146 each patient care unit in a conspicuous location visible and accessible to
147 staff, patients and members of the public. Each hospital shall maintain
148 accurate records, for not less than the preceding three years, of the ratios
149 of patients to direct care registered nurses and patients to assistive
150 personnel providing patient care in each direct care unit for each shift.
151 Such records shall include the number of (1) patients in each unit on
152 each shift, (2) direct care registered nurses assigned to each patient in
153 each unit on each shift, and (3) assistive personnel providing patient
154 care assigned to each patient in each unit on each shift. Each hospital
155 shall make such records available, upon request, to the Department of
156 Public Health, the staff of the hospital, any collective bargaining unit
157 representing such staff, the patients of the hospital and members of the
158 general public.

159 (g) No hospital shall require a registered nurse to undertake any
160 patient care task that is beyond the scope of the nurse's license.

161 (h) A registered nurse may object to or refuse to participate in any
162 activity, policy, practice or task assigned by a hospital if the registered
163 nurse is not competently able based on education, training or experience
164 to participate in the activity, policy, practice or task without
165 compromising the safety of a specific patient. If a registered nurse
166 objects or refuses to participate, the nurse shall immediately contact a
167 supervisor for assistance or to allow the hospital to find a suitable
168 replacement. Not later than twelve hours after objecting or refusing to
169 participate, the registered nurse shall submit a form, developed by the
170 hospital and approved by the Department of Public Health, that
171 includes the following: (1) A detailed statement of the reasons that the
172 nurse objects or refuses to participate in the activity, policy, practice or
173 task; (2) a description of how performing the activity, policy, practice or
174 task would have compromised patient safety; and (3) the ways in which
175 the activity, policy, practice or task was not consistent with the nurse's
176 education, training, experience or job description. A hospital shall
177 review and analyze each form submitted pursuant to this subsection

178 through one or more of the hospital's committees or functions,
179 including, but not limited to, the quality assessment and performance
180 improvement program, risk management or patient safety, and make
181 adjustments to nurse staffing assignments if necessary to improve
182 patient safety. Each hospital shall provide the Department of Public
183 Health with confidential access to the forms submitted to the hospital
184 pursuant to this subsection upon request.

185 (i) If a registered nurse reasonably believes his or her participation in
186 an activity, policy, practice or task would violate a provision of a nurse
187 staffing plan or policy approved by the hospital's nurse staffing
188 committee, the nurse may file a complaint with the nurse staffing
189 committee on a form developed by the hospital and approved by the
190 Department of Public Health. The hospital and its nurse staffing
191 committee shall analyze the complaint and provide the Department of
192 Public Health with an analysis of actions taken in response to such
193 complaint. The department shall submit all complaint forms provided
194 to it pursuant to this subsection with its biannual report required
195 pursuant to subsection (n) of this section.

196 (j) No hospital shall discharge, retaliate against, discriminate against
197 or take any other adverse action against a registered nurse or any aspect
198 of the registered nurse's employment, including, but not limited to,
199 discharge, promotion, reduction in compensation or changes to terms,
200 conditions or privileges of employment, as a result of such nurse taking
201 any of the actions described in this section, participation by the
202 registered nurse in a hospital staffing committee or raising of concerns
203 by the registered nurse regarding unsafe staffing or workplace violence,
204 racism or bullying.

205 (k) Nothing in this section shall be construed to allow a nurse to
206 abandon a patient or refuse to perform patient care activities (1) during
207 an ongoing surgical procedure until such procedure is completed; (2) in
208 a critical care unit, labor and delivery or emergency department until
209 such nurse is relieved by another nurse; (3) in the case of a public health
210 emergency; (4) in the case of an institutional emergency; or (5) in any

211 instance where inaction or abandonment by the nurse would jeopardize
212 patient safety.

213 (l) Nothing in this section shall prohibit a hospital, the Department of
214 Public Health or the State Board of Examiners for Nursing from
215 requiring a nurse to obtain additional training or continuing education
216 consistent with the nurse's assigned roles and job description.

217 [(d) On or before] (m) Not later than January 1, 2016, and annually
218 thereafter, the Commissioner of Public Health shall report, in
219 accordance with the provisions of section 11-4a, to the joint standing
220 committee of the General Assembly having cognizance of matters
221 relating to public health concerning hospital compliance with reporting
222 requirements under this section and recommendations concerning any
223 additional reporting requirements.

224 (n) Not later than October 1, 2024, and biannually thereafter, a
225 hospital shall report to the Department of Public Health, in a form and
226 manner prescribed by the Commissioner of Public Health, whether it
227 has been in compliance, for the previous six months, with at least eighty
228 per cent of the nurse staffing assignments as required by any component
229 outlined in the nurse staffing plan developed pursuant to subsections
230 (d) and (e) of this section.

231 (o) For a failure by a hospital to (1) establish or maintain a hospital
232 staffing committee pursuant to subsection (c) of this section, (2) submit
233 the report required by subsection (n) of this section to the Department
234 of Public Health, (3) post the staffing plan pursuant to subsection (f) of
235 this section, or (4) comply with at least eighty per cent of the nurse
236 staffing assignments set forth in the nurse staffing plan, the
237 Commissioner of Public Health shall issue an order that: (A) Requires
238 the hospital to submit a corrective action plan to correct such
239 noncompliance and implement such plan unless disapproved by the
240 department not later than twenty business days after its submission;
241 and (B) (i) imposes a civil penalty of three thousand five hundred dollars
242 for the first violation, or (ii) imposes a civil penalty of five thousand

243 dollars for each subsequent violation.

244 (p) (1) A hospital shall, not later than five business days after receipt
245 of an order pursuant to subsection (o) of this section, submit a request
246 in writing to the Department of Public Health for a hearing to contest
247 the order. If the hospital fails to submit such a request not later than five
248 business days after such receipt, the order shall be deemed a final order
249 of the department, effective upon the expiration of such five business
250 days. After receipt of a timely request for a hearing, the department shall
251 set the matter down for a hearing as a contested case in accordance with
252 the provisions of chapter 54.

253 (2) Each hospital shall pay any civil penalties imposed pursuant to
254 subsection (o) of this section not later than fifteen days after the final
255 date by which an appeal may be taken as provided in section 4-183 or,
256 if an appeal is taken, not later than fifteen days after the final judgment
257 on such appeal. If such penalties or the expenses of an audit ordered
258 under subsection (q) of this section are not paid by the hospital, the
259 Commissioner of Public Health shall notify the Commissioner of Social
260 Services who shall be authorized to immediately withhold from the
261 hospital's next medical assistance payment, an amount equal to the
262 amount of the civil penalty and audit expenses.

263 (q) The Commissioner of Public Health may order an audit of the
264 nurse staffing assignments of each hospital to determine compliance
265 with the nurse staffing assignments for each hospital unit set forth in the
266 nurse staffing plan developed pursuant to subsections (d) and (e) of this
267 section. Such audit may include an assessment of the hospital's
268 compliance with the requirements of this section for the content of such
269 plan, accuracy of reports submitted to the department and the
270 membership of the hospital staffing committee. In determining whether
271 to order an audit, the commissioner shall consider whether there has
272 been consistent noncompliance by the hospital with the nurse staffing
273 plan, fear of false reporting by the hospital, or any other health care
274 quality safety concerns. The hospital that is subject to the audit shall pay
275 the cost of the audit. The audit shall not affect the conduct by the

276 hospital of peer review as defined in section 19a-17b.

277 Sec. 2. Section 19a-490l of the general statutes is repealed and the
278 following is substituted in lieu thereof (*Effective October 1, 2023*):

279 (a) As used in this section:

280 (1) "Nurse" means a registered nurse or a practical nurse licensed
281 pursuant to chapter 378, or a nurse's aide registered pursuant to chapter
282 378a; [and]

283 (2) "Hospital" has the same meaning as set forth in section 19a-490i;
284 and

285 (3) "Overtime" means working (A) in excess of a predetermined
286 scheduled work shift, regardless of the length of such scheduled work
287 shift, provided such scheduled work shift is determined and
288 communicated not less than forty-eight hours prior to the
289 commencement of such scheduled work shift, (B) more than twelve
290 hours in a twenty-four-hour period, or (C) more than forty-eight hours
291 in any hospital-defined work week.

292 (b) [No] Except as provided in this section, no hospital [may] shall
293 require a nurse to work [in excess of a predetermined scheduled work
294 shift, provided such scheduled work shift is determined and
295 promulgated not less than forty-eight hours prior to the commencement
296 of such scheduled work shift] overtime. No hospital shall discriminate
297 against, discharge, discipline, threaten to discharge or discipline or
298 otherwise retaliate against a nurse for refusing to work overtime.

299 (c) Any nurse may volunteer or agree to work [hours in addition to
300 such scheduled work shift but the refusal by a nurse to accept such
301 additional hours shall not be grounds for discrimination, dismissal,
302 discharge or any other penalty or employment decision adverse to the
303 nurse] overtime.

304 [(c) The] (d) When the safety of a patient requires and when there is
305 no reasonable alternative, the provisions of subsection (b) of this section

306 shall not apply: (1) To any nurse participating in [a] an ongoing surgical
307 procedure until such procedure is completed; (2) to any nurse working
308 in a critical care unit until such nurse is relieved by another nurse who
309 is commencing a scheduled work shift; (3) in the case of a public health
310 emergency; (4) in the case of an institutional emergency, including, but
311 not limited to, adverse weather conditions, catastrophe or widespread
312 illness, that in the opinion of the hospital administrator will significantly
313 reduce the number of nurses available for a scheduled work shift,
314 provided the hospital administrator has made a good faith effort to
315 mitigate the impact of such institutional emergency on the availability
316 of nurses; or (5) to any nurse employed at a behavioral health facility
317 operated by a state agency who is covered by a collective bargaining
318 agreement that contains provisions addressing the issue of mandatory
319 overtime.

320 (e) Before requiring a nurse to work overtime in accordance with the
321 provisions of subsection (d) of this section, a hospital shall make a good
322 faith effort to have such overtime hours covered on a voluntary basis.
323 Mandatory overtime shall not be required as a regular practice for
324 providing appropriate staffing for the necessary level of patient care or
325 in any situation that is the result of routine staffing needs caused by
326 typical staffing patterns, expected levels of absenteeism or time off
327 typically approved by the hospital for vacation, holidays, sick leave and
328 personal leave.

329 (f) (1) The provisions of this section shall not be construed to alter or
330 impair the terms of any bona fide collective bargaining agreement that
331 places additional restrictions or limitations on the use of mandatory
332 overtime.

333 (2) The provisions of this section shall not prohibit mandatory
334 overtime with respect to any nurse who is covered by a bona fide
335 collective bargaining agreement that is in effect prior to October 1, 2023,
336 or by a bona fide collective bargaining agreement entered into pursuant
337 to chapter 68 that is in effect prior to June 1, 2027, and contains
338 provisions addressing the issue of mandatory overtime, until the

339 expiration date of the collective bargaining agreement."

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2023</i>	19a-89e
Sec. 2	<i>October 1, 2023</i>	19a-490l