HOUSE COMMITTEE ON APPROPRIATIONS

FISCAL NOTE

HOUSE BILL NO. 106 **PRINTER'S NO. 1743** **PRIME SPONSOR: Mehaffie**

COST / (SAVINGS)

FUND	FY 2022/23	FY 2023/24
General Fund	$0	$23 million See Fiscal Impact

SUMMARY:

House Bill 106 Printer's Number 1743 amends the Act of July 19, 1979, known as the Health Care Facilities Act, to establish nurse to patient staffing ratios in a hospital unit.

ANALYSIS:

This legislation amends the Health Care Facilities Act to add Chapter 8-C Hospital Patient Protection Provisions. This chapter adds staffing ratios for direct care registered nurses providing care in a hospital. Direct care registered nurse ratios are dependent on the level of care needed to address the needs of patients receiving care from that nurse.

The legislation prescribes staffing ratios as one direct care registered nurse to a maximum number of patients, dependent on the hospital location:

Hospital Location/Unit	Number of Patients Per Nurse
Emergency Department	4
Intensive Care Unit	2
Labor and Delivery – Not in active labor, experiencing complications, or immediate postpartum	2
Labor and Delivery – In Active Labor	1
Labor and Delivery – Any stage of labor and experiencing complications	1
Labor and Delivery – Initiation of epidural anesthesia and circulation for cesarean delivery	1
Labor and Delivery – Postpartum, antepartum and well-baby nursery	6 Note – Mother and Baby each count as separate patients

Hospital Location/Unit	Number of Patients Per Nurse
Oncology Unit	4
Post anesthesia care unit	2
Medical-surgical unit	3
Cardiac telemetry unit	3
Pediatric unit	3
Presurgical and admissions unit	4
Ambulatory surgical unit	4
Burn unit	2
Other specialty unit	4
In-patient psychiatric unit	5
In-patient rehabilitation unit	5
Operating room	1
Unit where the patient is receiving conscious sedation	1

Additional registered nursing staff, in excess of the required staffing ratios, will be assigned to direct patient care in accordance with the patient's health and care needs.

HB106 requires each hospital to develop a written hospital-wide staffing plan for direct care and other ancillary staff. The primary goal of the staffing plan is to ensure that the hospital is staffed to meet the health care needs of their patients and meet the staffing ratio requirements under this legislation.

The hospital must submit the staffing plan to the Department of Health. Any changes in the staffing plan must be submitted to the department no later than 30 days after approval of the changes by the hospital.

The hospital must review the staffing plan at least once every year. Upon concluding its review, the hospital must report to the department whether the plan ensures that the hospital is staffed to meet the health care needs of the patients and if necessary, modify the staffing plan to ensure that the plan meets patient needs.

This legislation also requires the Department of Health to develop a form to be used by direct care registered nurses invoking safe harbor. Safe harbor is defined as a process that protects a direct care registered nurse from adverse action by the health care facility where the direct care registered nurse accepts an assignment despite objection over the ratios prescribed in this legislation or staffing requirements prescribed by the hospital's staffing plan.

The Department of Health must establish a method by which a complaint, regarding a violation of the requirements in this legislation, may be filed along with supporting documentation through the department's website. Complaints must be filed no later than 60 days after the date of an alleged violation, and no later than 30 days after receiving a complaint, the department must open an investigation. The department must conclude the investigation within 60 days. In conducting an investigation, the department must make on-site inspections of the unit, conduct interviews, compel production of documents and records pertaining to the complaint and take any other steps necessary to investigate the complaint.

The department must issue a written report on the complaint to the complainant and the exclusive representative, if any, of the complainant. The report must include, but is not limited to, notice of the civil penalties that complies with this legislation, if the department imposes one or more civil penalties on the hospital.

The department may impose civil and administrative penalties to ensure compliance with this legislation. These penalties include, but are not limited to, corrective action plans, civil penalties, declaration of immediate jeopardy, and suspension or revocation of a hospital's license. The department must adopt by rule a schedule establishing the amount of civil penalty that may be imposed for a violation. The civil penalty may be no less than $1,000 and no more than $2,500 per violation. Penalties will not apply to hospitals until one year after the effective date of this legislation. Penalties will not apply to rural hospitals and high medical assistance hospitals until two years after the effective date of this legislation.

The department must establish a grant program using money collected from civil penalties. This grant program's purpose is recruitment and retention of registered nurses. Grants may be awarded to rural hospitals and high medical assistance hospitals.

The department must post on their publicly accessible website:

- The hospital staffing plans received by the department.
- Any report made pursuant to an investigation of the complaint for which the department issued a warning or imposed a civil or administrative penalty under this legislation.
- Any order requiring a hospital to remedy a violation as described in this legislation.

The department must maintain, for public inspection and make publicly available, records of civil or administrative penalties, including license suspensions, revocations, corrective action plans or other enforcement actions imposed on hospitals that violate the requirements in this legislation.

If an emergency causes a significant and atypical change in the number of patients on a hospital unit beyond the normal fluctuations in the number of patients placed on that unit, the hospital must demonstrate that immediate and diligent efforts were made to maintain the required staffing levels required by this legislation. The hospital must maintain such diligent efforts to meet the requirements in this legislation for the full duration of the emergency.

The department may adopt regulations necessary to carry out the requirements in this legislation.

This legislation will take effect in one year.

FISCAL IMPACT:

Costs to the Department of Health - Personnel

This legislation is expected to have a fiscal impact for the Department of Health beginning in June 2024, assuming passage of the bill in June 2023 and the one-year effective date. Ahead of the effective date of the staffing ratios, the department would need to hire at least 4 additional staff positions, including an administrative, a fiscal, and at least two investigative staff, to manage the following requirements in this legislation:

- Management of the hospital staffing plans,
- Complaint acceptance, review, and processing,
- Complaint investigations,
- Report preparation and issuance,
- Civil penalty collections and processing,
- Grant review, awards, and monitoring.

Based on the need for at least 4 new complement positions, each at an estimated cost of $100,000, inclusive of salary and benefits, the department's estimated additional personnel costs total $400,000 per annum in state General Funds. These additional staff costs would start to be realized in the 2023/24 fiscal year, with the full increase in personnel costs expected in 2024/25. The exact amount of costs falling in the 2023/24 fiscal year depends on when the positions are hired, which could vary depending on the speed of the hiring process.

Costs to the Department of Human Services – State Hospitals

The Department of Human Services (DHS) operates seven state-owned facilities that will be subject to the staffing ratios required by this legislation. DHS estimates they will need to hire approximately 500 registered nurses to ensure compliance with the requisite staffing ratios. Each registered nurse employed by the Commonwealth has an estimated cost of approximately $125,000 inclusive of salary and benefits. DHS would start hiring additional nurses in 2023/24 with the full increase to personnel costs expected in 2024/25 when the mandate takes effect.

The annualized total cost for the 500 additional nurses totals $62.5 million. Assuming that federal matching funds picks up 50% of the costs for these positions, the annual state General Fund portion is anticipated to cost approximately $31.25 million. Some of. Some this cost costs would begin in 2023/24 in order for DHS to be compliant by the effective date of this legislation – the actual amount will depend on start dates and training periods, which vary by facility. This analysis assumes 9 months of personnel costs in FY 2023/24, resulting in $23 million (or 75% of the annual amount) in state General Funds expenditures.

Costs to the Department of Human Services - Medical Assistance programs

The Department of Human Services also pays for inpatient hospital services through the Medical Assistance Fee-for-Service and managed care programs. Hospitals will experience increased costs to hire and retain the direct care registered nurses to ensure compliance with this legislation. For the Commonwealth's managed care programs, the department pays a rate for each enrolled member for each calendar month to the managed care organizations (MCOs). The MCOs then contract with hospitals who provide the needed hospital care to patients enrolled in those plans.

As hospitals experience increased staffing costs, there may be requests to renegotiate contracted payment rates between the MCOs and their contracted hospitals. Federal law requires that rates paid by the department to the MCOs must be actuarially sound. The department will need to ensure their contracted actuary considers any impacts from this legislation when developing the managed care rates for calendar year 2024 and subsequent calendar years. Any increase in the rates paid to managed care plans can not be determined at this time.

Additionally, the department may need to complete a review and determine whether there would be any impact to the Fee-for-Service program based on the effective date of this legislation. At this time, no increase to costs in the Fee-for-Service program is anticipated.

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House Appropriations Committee (D)

DATE: June 28, 2023

Estimates are calculated using the best information available. Actual costs and revenue impact incurred may vary from estimates.