REFERENCE TITLE: hospitals; patient protection; nurses' rights

State of Arizona
House of Representatives
Forty-ninth Legislature
First Regular Session
2009

HB 2186

Introduced by
Representatives Lopes, Ableser, Chabin

AN ACT

REPEALING TITLE 36, CHAPTER 4, ARTICLE 11, ARIZONA REVISED STATUTES; AMENDING TITLE 36, ARIZONA REVISED STATUTES, BY ADDING CHAPTER 11; RELATING TO PATIENT PROTECTION.

(TEXT OF BILL BEGINS ON NEXT PAGE)

Be it enacted by the Legislature of the State of Arizona:

Section 1. Repeal

Title 36, chapter 4, article 11, Arizona Revised Statutes, is repealed.

Sec. 2. Title 36, Arizona Revised Statutes, is amended by adding chapter 11, to read:

CHAPTER 11

PATIENT PROTECTION

ARTICLE 1. GENERAL PROVISIONS

36-1301. Definitions

IN THIS CHAPTER, UNLESS THE CONTEXT OTHERWISE REQUIRES:

1. "CLINICAL JUDGMENT" MEANS THE APPLICATION OF THE DIRECT CARE REGISTERED NURSE'S KNOWLEDGE, SKILL, EXPERTISE AND EXPERIENCE TO MAKE INDEPENDENT DECISIONS ABOUT PATIENT CARE.

2. "COMPETENCE" MEANS THE ABILITY OF THE DIRECT CARE REGISTERED NURSE TO ACT AND INTEGRATE THE KNOWLEDGE, SKILLS AND INDEPENDENT PROFESSIONAL JUDGMENT THAT ARE THE BASIS OF SAFE AND THERAPEUTIC PATIENT CARE.

3. "CRITICAL ACCESS HOSPITAL" MEANS A FACILITY THAT IS DESIGNATED PURSUANT TO A MEDICARE RURAL HOSPITAL FLEXIBILITY PROGRAM ESTABLISHED BY THIS STATE AND THAT IS DEFINED IN 42 UNITED STATES CODE SECTION 1395x(mm).

4. "CRITICAL CARE UNIT" OR "INTENSIVE CARE UNIT" MEANS A NURSING UNIT OF AN ACUTE CARE HOSPITAL THAT IS ESTABLISHED TO SAFEGUARD AND PROTECT PATIENTS WHOSE SEVERITY OF MEDICAL CONDITIONS REQUIRES CONTINUOUS MONITORING AND COMPLEX INTERVENTIONS BY DIRECT CARE REGISTERED NURSES AND WHOSE RESTORATIVE MEASURES AND LEVEL OF NURSING INTENSITY REQUIRE INTENSIVE CARE THROUGH DIRECT OBSERVATION BY THE DIRECT CARE REGISTERED NURSE, COMPLEX MONITORING, INTENSIVE INTRICATE ASSESSMENT, EVALUATION, SPECIALIZED RAPID INTERVENTION, AND EDUCATION AND TEACHING OF THE PATIENT, THE PATIENT'S FAMILY OR OTHER REPRESENTATIVES BY A COMPETENT AND EXPERIENCED DIRECT CARE REGISTERED NURSE. CRITICAL CARE UNIT INCLUDES AN INTENSIVE CARE UNIT, BURN CENTER, CORONARY CARE UNIT AND ACUTE RESPIRATORY UNIT.

5. "DIRECT CARE REGISTERED NURSE" OR "NURSE" MEANS A REGISTERED NURSE WHO IS LICENSED PURSUANT TO TITLE 32, CHAPTER 15, WHO HAS DOCUMENTED CLINICAL COMPETENCE AND WHO HAS ACCEPTED A DIRECT, HANDS-ON PATIENT CARE ASSIGNMENT TO IMPLEMENT MEDICAL AND NURSING REGIMENS.

6. "HOSPITAL" INCLUDES A GENERAL HOSPITAL, CRITICAL ACCESS HOSPITAL, SPECIAL HOSPITAL AND LONG-TERM ACUTE-CARE HOSPITAL.

7. "HOSPITAL UNIT" OR "UNIT" MEANS AN INTENSIVE CARE UNIT, CRITICAL CARE UNIT, BURN UNIT, LABOR AND DELIVERY ROOM, ANTEPARTUM AND POSTPARTUM UNIT, MEDICAL-SURGICAL UNIT, NEWBORN NURSERY, POSTANESTHESIA RECOVERY UNIT, EMERGENCY DEPARTMENT, OPERATING ROOM, PEDIATRIC UNIT, STEP-DOWN AND INTERMEDIATE CARE UNIT, SPECIALTY CARE UNIT, TELEMETRY UNIT, GENERAL MEDICAL CARE UNIT, PSYCHIATRIC UNIT, REHABILITATION UNIT OR SKILLED NURSING FACILITY UNIT.

8. "LONG-TERM ACUTE-CARE HOSPITAL" MEANS A HOSPITAL OR HEALTH CARE FACILITY THAT SPECIALIZES IN PROVIDING ACUTE CARE TO MEDICALLY COMPLEX PATIENTS WITH AN ANTICIPATED LENGTH OF STAY OF MORE THAN TWENTY-FIVE DAYS AND INCLUDES FREESTANDING AND HOSPITAL-WITHIN-HOSPITAL MODELS OF LONG-TERM ACUTE-CARE FACILITIES.

9. "MEDICAL-SURGICAL UNIT" MEANS A UNIT THAT IS ESTABLISHED TO SAFEGUARD AND PROTECT PATIENTS WHOSE SEVERITY OF ILLNESS, INCLUDING ALL COMORBIDITIES, RESTORATIVE MEASURES AND LEVEL OF NURSING INTENSITY, REQUIRES CONTINUOUS CARE THROUGH DIRECT OBSERVATION BY THE DIRECT CARE REGISTERED NURSE, MONITORING, MULTIPLE ASSESSMENTS, SPECIALIZED INTERVENTIONS, EVALUATIONS, AND EDUCATION AND TEACHING OF THE PATIENT, THE PATIENT'S FAMILY OR OTHER REPRESENTATIVES BY A COMPETENT AND EXPERIENCED DIRECT CARE REGISTERED NURSE. MEDICAL-SURGICAL UNIT INCLUDES UNITS IN WHICH PATIENTS REQUIRE LESS THAN INTENSIVE CARE OR STEP-DOWN CARE AND IN WHICH PATIENTS RECEIVE TWENTY-FOUR HOUR INPATIENT GENERAL MEDICAL CARE OR POSTSURGICAL CARE, OR BOTH, AND MAY INCLUDE UNITS OF MIXED PATIENT POPULATIONS OF DIVERSE DIAGNOSES AND DIVERSE AGE GROUPS, EXCLUDING PEDIATRIC PATIENTS.

10. "PATIENT ASSESSMENT" MEANS THE INTELLECTUALLY DISCIPLINED PROCESS OF ACTIVELY AND SKILLFULLY INTERPRETING, APPLYING, ANALYZING, SYNTHESIZING AND EVALUATING DATA OBTAINED THROUGH THE DIRECT CARE REGISTERED NURSE'S DIRECT OBSERVATION AND COMMUNICATION WITH OTHERS.

11. "PATIENT CLASSIFICATION SYSTEM" OR "SYSTEM" MEANS A PATIENT ACUITY-BASED STANDARDIZED SET OF CRITERIA THAT ARE BASED ON SCIENTIFIC DATA AND THAT ARE USED TO DETERMINE CARE REQUIREMENTS FOR AN INDIVIDUAL PATIENT AND TO DETERMINE THE ADDITIONAL NUMBER OF DIRECT CARE REGISTERED NURSES AND OTHER LICENSED AND UNLICENSED NURSING STAFF THE HOSPITAL MUST ASSIGN TO MEET THE INDIVIDUAL PATIENT NEEDS AT ALL TIMES.

12. "PROFESSIONAL JUDGMENT" MEANS THE INTELLECTUAL PROCESS THAT THE DIRECT CARE REGISTERED NURSE USES TO FORM AN OPINION AND TO REACH A CLINICAL DECISION, IN THE PATIENT'S BEST INTEREST, AND THAT IS BASED ON ANALYSIS OF DATA, INFORMATION AND SCIENTIFIC EVIDENCE.

13. "REHABILITATION UNIT" MEANS A FUNCTIONAL CLINICAL UNIT THAT PROVIDES REHABILITATION SERVICES THAT RESTORE AN ILL OR INJURED PATIENT TO THE HIGHEST LEVEL OF SELF-SUFFICIENCY OR GAINFUL EMPLOYMENT THE PATIENT IS CAPABLE OF IN THE SHORTEST POSSIBLE TIME, COMPATIBLE WITH THE PATIENT'S PHYSICAL, INTELLECTUAL AND EMOTIONAL OR PSYCHOLOGICAL CAPABILITIES AND IN ACCORD WITH PLANNED GOALS AND OBJECTIVES.

14. "SKILLED NURSING FACILITY UNIT" MEANS A FUNCTIONAL CLINICAL UNIT THAT PROVIDES SKILLED NURSING CARE AND SUPPORTIVE CARE TO PATIENTS WHOSE PRIMARY NEED IS FOR THE AVAILABILITY OF SKILLED NURSING CARE ON A LONG-TERM BASIS AND WHO ARE ADMITTED AFTER AT LEAST A FORTY-EIGHT HOUR PERIOD OF CONTINUOUS INPATIENT CARE AND THAT PROVIDES AT LEAST MEDICAL, NURSING, DIETARY AND PHARMACEUTICAL SERVICES AND AN ACTIVITY PROGRAM.

15. "SPECIALTY CARE UNIT" MEANS A UNIT THAT IS ESTABLISHED TO SAFEGUARD AND PROTECT PATIENTS WHOSE SEVERITY OF ILLNESS, INCLUDING ALL COMORBIDITIES, RESTORATIVE MEASURES AND LEVEL OF NURSING INTENSITY, REQUIRES CONTINUOUS CARE THROUGH DIRECT OBSERVATION BY THE DIRECT CARE REGISTERED NURSE, MONITORING, MULTIPLE ASSESSMENTS, SPECIALIZED INTERVENTIONS, EVALUATIONS, AND EDUCATION OR TEACHING OF THE PATIENT, THE PATIENT'S FAMILY OR OTHER REPRESENTATIVES BY A COMPETENT AND EXPERIENCED DIRECT CARE REGISTERED NURSE, THAT PROVIDES INTENSITY OF CARE FOR A SPECIFIC MEDICAL CONDITION OR A SPECIFIC PATIENT POPULATION, THAT IS MORE COMPREHENSIVE FOR THE SPECIFIC CONDITION OR DISEASE PROCESS THAN THAT REQUIRED FOR MEDICAL-SURGICAL UNITS AND THAT IS NOT OTHERWISE COVERED BY OTHER UNITS.

16. "STEP-DOWN AND INTERMEDIATE CARE UNIT" MEANS A UNIT THAT IS ESTABLISHED TO SAFEGUARD AND PROTECT PATIENTS WHOSE SEVERITY OF ILLNESS, INCLUDING ALL COMORBIDITIES, RESTORATIVE MEASURES AND LEVEL OF NURSING INTENSITY, REQUIRES INTERMEDIATE INTENSIVE CARE THROUGH DIRECT OBSERVATION BY THE DIRECT CARE REGISTERED NURSE, MONITORING, MULTIPLE ASSESSMENTS, SPECIALIZED INTERVENTIONS, EVALUATIONS, AND EDUCATION OR TEACHING OF THE PATIENT, THE PATIENT'S FAMILY OR OTHER REPRESENTATIVES BY A COMPETENT AND EXPERIENCED DIRECT CARE REGISTERED NURSE, AND THAT PROVIDES CARE TO PATIENTS WITH MODERATE OR POTENTIALLY SEVERE PHYSIOLOGICAL INSTABILITY THAT REQUIRES TECHNICAL SUPPORT BUT NOT NECESSARILY ARTIFICIAL LIFE SUPPORT. FOR THE PURPOSES OF THIS PARAGRAPH:

(a) "ARTIFICIAL LIFE SUPPORT" MEANS A SYSTEM THAT USES MEDICAL TECHNOLOGY TO AID, SUPPORT OR REPLACE A VITAL FUNCTION OF THE BODY THAT HAS BEEN SERIOUSLY DAMAGED.

(b) "TECHNICAL SUPPORT" MEANS SPECIALIZED EQUIPMENT OR DIRECT CARE, OR BOTH, INVASIVE MONITORING, TELEMETRY AND MECHANICAL VENTILATION USED FOR THE IMMEDIATE AMELIORATION OR REMEDIATION OF SEVERE PATHOLOGY FOR THOSE PATIENTS WHO REQUIRE LESS CARE THAN INTENSIVE CARE BUT MORE THAN THAT REQUIRED FROM MEDICAL-SURGICAL CARE.

17. "TELEMETRY UNIT" MEANS A UNIT THAT IS ESTABLISHED TO SAFEGUARD AND PROTECT PATIENTS WHOSE SEVERITY OF ILLNESS, INCLUDING ALL COMORBIDITIES, RESTORATIVE MEASURES AND LEVEL OF NURSING INTENSITY, REQUIRES INTERMEDIATE INTENSIVE CARE THROUGH DIRECT OBSERVATION BY THE DIRECT CARE REGISTERED NURSE, MONITORING, MULTIPLE ASSESSMENTS, SPECIALIZED INTERVENTIONS, EVALUATIONS, AND EDUCATION OR TEACHING OF THE PATIENT, THE PATIENT'S FAMILY OR OTHER REPRESENTATIVES BY A COMPETENT AND EXPERIENCED DIRECT CARE REGISTERED NURSE, AND THAT IS DESIGNATED FOR THE ELECTRONIC MONITORING, RECORDING, RETRIEVAL AND DISPLAY OF CARDIAC ELECTRICAL SIGNALS.

36-1302. Nursing services

A. EVERY HOSPITAL SHALL HAVE AN ORGANIZED NURSING SERVICE THAT PROVIDES TWENTY-FOUR HOUR NURSING SERVICES AS REQUIRED BY PATIENT NEEDS AND IN ACCORDANCE WITH THIS CHAPTER AND RULES ADOPTED BY THE BOARD OF NURSING PURSUANT TO THIS CHAPTER.

B. THE NURSING SERVICE SHALL BE ORGANIZED, STAFFED, EQUIPPED AND SUPPLIED TO PROVIDE COMPETENT, SAFE, THERAPEUTIC AND EFFECTIVE NURSING CARE TO MEET THE NEEDS OF PATIENTS.

C. THE NURSING SERVICE SHALL BE UNDER THE ADMINISTRATIVE AUTHORITY AND DIRECTION OF A CHIEF NURSING OFFICER WHO IS A CURRENTLY LICENSED REGISTERED NURSE AND WHO POSSESS THE QUALIFICATIONS AND EXPERIENCE AS DETERMINED FROM TIME TO TIME BY THE DEPARTMENT AND ADOPTED BY BOARD RULE.

D. THE CHIEF NURSING OFFICER SHALL REPORT DIRECTLY TO THE INDIVIDUAL WHO HAS AUTHORITY TO REPRESENT THE HOSPITAL AND WHO IS RESPONSIBLE FOR THE OPERATION OF THE HOSPITAL ACCORDING TO THE POLICIES AND PROCEDURES OF THE HOSPITAL'S GOVERNING BOARD.

E. THE FOLLOWING SHALL BE EXPRESSLY STATED IN WRITTEN POLICIES OF THE HOSPITAL'S GOVERNING BOARD:

1. UNCONDITIONAL ASSURANCE AND WARRANTY THAT THE CHIEF NURSING OFFICER HAS AUTHORITY, RESPONSIBILITY AND ACCOUNTABILITY FOR THE NURSING SERVICE WITHIN THE HOSPITAL.

2. A COMPREHENSIVE DESCRIPTION OF THE INTERNAL STRUCTURE AND ACCOUNTABILITY OF THE NURSING SERVICE, INCLUDING IDENTIFICATION OF NURSING SERVICE UNITS AND COMMITTEES.

3. A CLEAR DEFINITION OF THE RELATIONSHIP BETWEEN THE NURSING SERVICE AND HOSPITAL ADMINISTRATION, ORGANIZED MEDICAL STAFF AND OTHER HOSPITAL DEPARTMENTS.

4. A MANDATORY REQUIREMENT AND PROHIBITION THAT NO ADMINISTRATIVE, MEDICAL STAFF OR OTHER HOSPITAL COMMITTEE HAS ANY AUTHORITY TO ADDRESS, CONSIDER, DETERMINE OR SEEK TO RESOLVE ISSUES AFFECTING NURSING CARE UNLESS THE COMMITTEE INCLUDES CURRENTLY LICENSED REGISTERED NURSES WHO PROVIDE DIRECT PATIENT CARE AT THE HOSPITAL AS FULL PARTICIPATING AND VOTING COMMITTEE MEMBERS. LICENSED VOCATIONAL NURSES MAY ALSO SERVE ON THOSE COMMITTEES, BUT NOT IN LIEU OF OR AS SUBSTITUTES FOR DIRECT CARE REGISTERED NURSES.

36-1303. Essential functions of direct care registered nurses

A. A DIRECT CARE REGISTERED NURSE WHO IS CURRENTLY LICENSED TO PRACTICE AS A REGISTERED NURSE, WHO EMPLOYS SCIENTIFIC KNOWLEDGE AND EXPERIENCE IN THE PHYSICAL, SOCIAL AND BIOLOGICAL SCIENCES AND WHO EXERCISES INDEPENDENT PROFESSIONAL JUDGMENT IN APPLYING THE NURSING PROCESS SHALL DIRECTLY PROVIDE:

1. CONTINUOUS AND ONGOING PATIENT ASSESSMENTS.

2. THE PLANNING, CLINICAL SUPERVISION, IMPLEMENTATION AND EVALUATION OF THE NURSING CARE PROVIDED TO EACH PATIENT. THE IMPLEMENTATION OF NURSING CARE MAY BE ASSIGNED BY THE DIRECT CARE REGISTERED NURSE RESPONSIBLE FOR THE PATIENT TO OTHER LICENSED NURSING STAFF OR TO UNLICENSED STAFF:

(a) SUBJECT TO ANY LIMITATIONS OF THEIR LICENSURE, CERTIFICATION, LEVEL OF VALIDATED COMPETENCY AND APPLICABLE LAW.

(b) IF THE DIRECT CARE REGISTERED NURSE ASSIGNED TO THE PATIENT HAS DETERMINED IN THE NURSE'S PROFESSIONAL JUDGMENT THAT NURSING PERSONNEL TO BE ASSIGNED PATIENT CARE TASKS POSSESS THE NECESSARY PREPARATION AND CAPABILITY TO COMPETENTLY PERFORM THE ASSIGNED TASKS.

(c) ONLY IF CIRCUMSTANCES PERMIT THE DIRECT CARE REGISTERED NURSE TO EFFECTIVELY SUPERVISE NURSING CARE PROVIDED PURSUANT TO THE ASSIGNMENT.

3. THE ASSESSMENT, PLANNING, IMPLEMENTATION AND EVALUATION OF PATIENT EDUCATION, INCLUDING ONGOING DISCHARGE TEACHING OF EACH PATIENT. ANY ASSIGNMENT OF SPECIFIC PATIENT EDUCATION TASKS TO PATIENT CARE PERSONNEL SHALL BE MADE BY THE DIRECT CARE REGISTERED NURSE RESPONSIBLE FOR THE PATIENT.

B. THE PLANNING AND DELIVERY OF PATIENT CARE SHALL REFLECT ALL ELEMENTS OF THE NURSING PROCESS, INCLUDING ASSESSMENT, NURSING DIAGNOSIS, PLANNING, INTERVENTION, EVALUATION AND, AS CIRCUMSTANCES REQUIRE, PATIENT ADVOCACY, AND SHALL BE INITIATED BY A DIRECT CARE REGISTERED NURSE AT THE TIME OF ADMISSION.

C. THE NURSING PLAN FOR THE PATIENT'S CARE SHALL BE DISCUSSED WITH AND DEVELOPED AS A RESULT OF COORDINATION WITH THE PATIENT, THE PATIENT'S FAMILY OR OTHER REPRESENTATIVES, WHEN APPROPRIATE, AND STAFF OF OTHER DISCIPLINES INVOLVED IN THE CARE OF THE PATIENT.

D. THE DIRECT CARE REGISTERED NURSE SHALL EVALUATE THE EFFECTIVENESS OF THE CARE PLAN THROUGH ASSESSMENTS BASED ON DIRECT OBSERVATION OF THE PATIENT'S PHYSICAL CONDITION AND BEHAVIOR, SIGNS AND SYMPTOMS OF ILLNESS AND REACTIONS TO TREATMENT AND THROUGH COMMUNICATION WITH THE PATIENT AND THE HEALTH CARE TEAM MEMBERS, AND SHALL MODIFY THE PLAN AS NEEDED.

E. INFORMATION RELATED TO THE PATIENT'S INITIAL ASSESSMENT AND REASSESSMENTS, NURSING DIAGNOSIS, PLAN, INTERVENTION, EVALUATION AND PATIENT ADVOCACY SHALL BE PERMANENTLY RECORDED IN THE PATIENT'S MEDICAL RECORD AS NARRATIVE DIRECT CARE REGISTERED NURSE PROGRESS NOTES. EACH INDIVIDUAL PATIENT'S CONDITION, RELEVANT OBSERVATIONS, DATA AND DETERMINATIONS REGARDING THE CONDITION SHALL BE INCLUDED IN THE PATIENT'S MEDICAL RECORD AS NARRATIVE DIRECT CARE REGISTERED NURSE PROGRESS NOTES. THE PRACTICE OF "CHARTING BY EXCEPTION" IS PROHIBITED.

36-1304. Patient assessment

ONLY A DIRECT CARE REGISTERED NURSE IS AUTHORIZED TO PERFORM PATIENT ASSESSMENTS. A LICENSED PRACTICAL NURSE MAY ASSIST DIRECT CARE REGISTERED NURSES IN DATA COLLECTION.

36-1305. Individual patient nursing care

A. THE NURSING CARE NEEDS OF INDIVIDUAL PATIENTS SHALL BE DETERMINED BY A DIRECT CARE REGISTERED NURSE THROUGH THE PROCESS OF ONGOING PATIENT ASSESSMENTS, NURSING DIAGNOSES, FORMULATION AND ADJUSTMENT OF NURSING CARE PLANS.

B. THE PREDICTION OF INDIVIDUAL PATIENT NURSING CARE NEEDS FOR PROSPECTIVE ASSIGNMENT OF DIRECT CARE REGISTERED NURSES SHALL BE BASED ON INDIVIDUAL PATIENT ASSESSMENTS OF THE DIRECT CARE REGISTERED NURSE ASSIGNED

TO EACH PATIENT AND IN ACCORDANCE WITH A DOCUMENTED PATIENT CLASSIFICATION SYSTEM PURSUANT TO THIS ARTICLE.

36-1306. Clinical supervision

A. IN ADDITION TO THE LIMITATIONS ON ASSIGNMENTS OF PATIENT CARE TASKS PRESCRIBED IN THIS ARTICLE, A DIRECT CARE REGISTERED NURSE WHO IS RESPONSIBLE FOR A PATIENT MAY ASSIGN TASKS REQUIRED IN THE IMPLEMENTATION OF NURSING CARE FOR THAT PATIENT TO OTHER LICENSED NURSING STAFF OR TO UNLICENSED STAFF ONLY IF THE DIRECT CARE REGISTERED NURSE:

1. DETERMINES THAT THE PERSONNEL ASSIGNED THE TASKS POSSESS THE NECESSARY TRAINING, EXPERIENCE AND CAPABILITY TO COMPETENTLY AND SAFELY PERFORM THE TASKS TO BE ASSIGNED.

2. EFFECTIVELY SUPERVISES THE CLINICAL FUNCTIONS AND NURSING CARE TASKS PERFORMED BY THE ASSIGNED PERSONNEL.

B. THE EXERCISE OF CLINICAL SUPERVISION OF NURSING CARE PERSONNEL BY A DIRECT CARE REGISTERED NURSE IN THE PERFORMANCE OF THE FUNCTIONS DESCRIBED IN THIS ARTICLE AND AS PROVIDED IN THIS SECTION SHALL BE IN THE EXCLUSIVE INTERESTS OF THE PATIENT AND SHALL NOT BE CONSIDERED, RELIED ON 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 EMPLOYER, BUT CONSTITUTES PROFESSIONAL NURSING AUTHORITY AND DUTY EXCLUSIVELY IN THE INTERESTS OF THE PATIENT.

36-1307. Independent professional judgment

A. COMPETENT PERFORMANCE OF THE ESSENTIAL FUNCTIONS OF A DIRECT CARE REGISTERED NURSE AS DESCRIBED IN THIS ARTICLE REQUIRES THE EXERCISE OF INDEPENDENT PROFESSIONAL JUDGMENT IN THE INTERESTS OF THE PATIENT. THE EXERCISE OF INDEPENDENT PROFESSIONAL JUDGMENT, UNENCUMBERED BY THE COMMERCIAL OR REVENUE GENERATION PRIORITIES OF A HOSPITAL AND EMPLOYING ENTITY OF A DIRECT CARE REGISTERED NURSE, IS ESSENTIAL TO SAFE HOSPITAL PATIENT NURSING CARE.

B. THE EXERCISE OF INDEPENDENT PROFESSIONAL JUDGMENT BY A DIRECT CARE REGISTERED NURSE IN THE PERFORMANCE OF THE FUNCTIONS DESCRIBED IN THIS ARTICLE AND AS PROVIDED IN THIS SECTION SHALL BE PROVIDED IN THE EXCLUSIVE INTERESTS OF THE PATIENT AND SHALL NOT BE CONSIDERED, RELIED ON 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 EMPLOYER.

36-1308. Restrictions on technology

A. A HOSPITAL OR OTHER MEDICAL FACILITY SHALL NOT ENGAGE IN THE DEPLOYMENT OF TECHNOLOGY THAT LIMITS THE DIRECT CARE REGISTERED NURSE IN THE PERFORMANCE OF FUNCTIONS THAT ARE PART OF THE NURSING PROCESS, INCLUDING FULL EXERCISE OF INDEPENDENT CLINICAL JUDGMENT IN ASSESSMENT, PLANNING, IMPLEMENTATION AND EVALUATION OF CARE, OR FROM ACTING AS PATIENT ADVOCATE IN THE EXCLUSIVE INTEREST OF THE PATIENT.

B. TECHNOLOGY SHALL NOT BE SKILL DEGRADING, INTERFERE WITH THE DIRECT CARE REGISTERED NURSE'S PROVIDING INDIVIDUALIZED PATIENT CARE, OVERRIDE THE DIRECT CARE REGISTERED NURSE'S INDEPENDENT PROFESSIONAL JUDGMENT OR INTERFERE WITH THE REGISTERED NURSE'S RIGHT TO ADVOCATE IN THE EXCLUSIVE INTEREST OF THE PATIENT.

36-1309. Staffing ratios

A. A HOSPITAL MUST MAINTAIN THE FOLLOWING MINIMUM DIRECT CARE REGISTERED NURSE-TO-PATIENT STAFFING RATIOS AS FOLLOWS AT ALL TIMES:

1. IN AN INTENSIVE CARE UNIT, 1:2.
2. IN A CRITICAL CARE UNIT, 1:2.
3. IN A NEONATAL INTENSIVE CARE UNIT, 1:2.
4. IN A BURN UNIT, 1:2.
5. IN A STEP-DOWN AND INTERMEDIATE CARE UNIT, 1:3.
6. IN A POSTANESTHESIA RECOVERY UNIT, 1:2 REGARDLESS OF THE TYPE OF ANESTHESIA THE PATIENT RECEIVES.
7. FOR PATIENTS RECEIVING CONSCIOUS SEDATION, 1:1.
8. FOR AN EMERGENCY DEPARTMENT, 1:4.
9. FOR CRITICAL CARE PATIENTS IN THE EMERGENCY DEPARTMENT, 1:2.
10. IN A LABOR AND DELIVERY ROOM OF THE PRENATAL SERVICES, 1:1 FOR ACTIVE LABOR PATIENTS AND PATIENTS WITH MEDICAL OR OBSTETRICAL COMPLICATIONS.
11. AT ALL TIMES FOR INITIATING EPIDURAL ANESTHESIA AND CIRCULATION FOR CESAREAN DELIVERY, 1:1.
12. FOR PATIENTS IN IMMEDIATE POSTPARTUM, 1:2.
13. FOR ANTEPARTUM PATIENTS WHO ARE NOT IN ACTIVE LABOR, 1:3.
14. FOR PATIENTS IN A POSTPARTUM AREA OF THE PRENATAL SERVICE, ONE NURSE TO THREE MOTHER-BABY COUPLETS. FOR MULTIPLE BIRTHS, THE TOTAL NUMBER OF MOTHERS AND INFANTS ASSIGNED TO A SINGLE DIRECT CARE REGISTERED NURSE SHALL NOT EXCEED SIX. IF THERE IS A CESAREAN DELIVERY, THE TOTAL NUMBER OF MOTHERS PLUS INFANTS ASSIGNED TO A SINGLE DIRECT CARE REGISTERED NURSE SHALL NOT EXCEED FOUR.
15. FOR POSTPARTUM AREAS IN WHICH THE DIRECT CARE REGISTERED NURSE'S ASSIGNMENT CONSISTS OF MOTHERS ONLY, 1:4.
16. FOR POSTPARTUM WOMEN OR POSTSURGICAL GYNECOLOGICAL PATIENTS ONLY, 1:4.
17. FOR A WELL BABY NURSERY, 1:5.
18. FOR UNSTABLE NEWBORNS AND THOSE IN THE RESUSCITATION PERIOD AS ASSESSED BY THE DIRECT CARE REGISTERED NURSE, 1:1.
19. FOR RECENTLY BORN INFANTS, 1:4.
20. IN A PEDIATRIC UNIT, 1:3.
21. IN A TELEMETRY UNIT, 1:3.
22. IN A MEDICAL-SURGICAL UNIT, 1:4.
23. IN A PRESURGICAL ADMISSIONS UNIT OR AMBULATORY SURGICAL UNIT, 1:4.
24. IN OTHER SPECIALTY UNITS, 1:4.
25. IN A PSYCHIATRIC UNIT, 1:4.
26. IN A REHABILITATION UNIT OR A SKILLED NURSING FACILITY, 1:5.

B. AN OPERATING ROOM MUST HAVE AT LEAST ONE DIRECT CARE REGISTERED NURSE ASSIGNED TO THE DUTIES OF THE CIRCULATING REGISTERED NURSE AND A MINIMUM OF ONE ADDITIONAL PERSON AS A SCRUB ASSISTANT FOR EACH PATIENT.

C. ONLY DIRECT CARE REGISTERED NURSES SHALL BE ASSIGNED TO CRITICAL TRAUMA PATIENTS IN THE EMERGENCY DEPARTMENT, AND A MINIMUM DIRECT CARE REGISTERED NURSE-TO-CRITICAL TRAUMA PATIENT RATIO OF 1:1 MUST BE MAINTAINED AT ALL TIMES.

D. TRIAGE, RADIO OR SPECIALTY-FLIGHT REGISTERED NURSES DO NOT COUNT IN THE CALCULATION OF THE DIRECT CARE REGISTERED NURSE-TO-PATIENT RATIO IN AN EMERGENCY DEPARTMENT.

36-1310. Patient classification system; staffing plan; review committees

A. IN ADDITION TO THE DIRECT CARE REGISTERED NURSE-TO-PATIENT RATIOS PRESCRIBED IN SECTION 36-1309, EACH HOSPITAL MUST IMPLEMENT A PATIENT CLASSIFICATION SYSTEM TO DETERMINE THE PATIENT CARE NEEDS OF INDIVIDUAL PATIENTS. THE HOSPITAL MUST ASSIGN ADDITIONAL DIRECT CARE REGISTERED NURSES AND OTHER LICENSED OR UNLICENSED STAFF, SUCH AS LICENSED PRACTICAL NURSES AND CERTIFIED NURSING ASSISTANTS, AS INDICATED BY THE PATIENT CLASSIFICATION SYSTEM. THE PATIENT CLASSIFICATION SYSTEM MUST REFLECT THE ASSESSMENT MADE BY THE ASSIGNED DIRECT CARE REGISTERED NURSE OF PATIENT NURSING CARE REQUIREMENTS AND PROVIDE FOR SHIFT-BY-SHIFT STAFFING BASED ON THOSE REQUIREMENTS. THE ASSESSMENT MUST INCLUDE THE SEVERITY OF THE PATIENT'S ILLNESS, THE NEED FOR SPECIALIZED EQUIPMENT AND TECHNOLOGY AND THE INTENSITY OF REQUIRED NURSING INTERVENTIONS THAT IS CONSISTENT WITH PROFESSIONAL STANDARDS, THE ABILITY FOR SELF-CARE, INCLUDING MOTOR, SENSORY AND COGNITIVE DEFICITS, THE NEED FOR ADVOCACY INTERVENTION, THE LICENSURE OF THE PERSONNEL REQUIRED FOR CARE, THE PATIENT CARE DELIVERY SYSTEM, THE HOSPITAL UNIT'S GEOGRAPHIC LAYOUT, GENERALLY ACCEPTED STANDARDS OF NURSING PRACTICE AND ELEMENTS THAT REFLECT THE UNIQUE NATURE OF THE ACUTE-CARE HOSPITAL'S PATIENT POPULATION.

B. THE RATIOS DETERMINED PURSUANT TO SECTION 36-1309 ARE THE MINIMUM NUMBER OF DIRECT CARE REGISTERED NURSES WHO MUST BE ASSIGNED TO DIRECT PATIENT CARE. THE HOSPITAL MUST ASSIGN ADDITIONAL DIRECT CARE REGISTERED NURSING STAFF IN EXCESS OF THESE PRESCRIBED RATIOS TO DIRECT PATIENT CARE ACCORDING TO THE HOSPITAL'S IMPLEMENTATION OF A VALID PATIENT CLASSIFICATION SYSTEM FOR DETERMINING NURSING CARE REQUIREMENTS. BASED ON THE DIRECT CARE REGISTERED NURSE ASSESSMENT AS REFLECTED IN THE IMPLEMENTATION OF A VALID PATIENT CLASSIFICATION SYSTEM AND INDEPENDENT DIRECT CARE REGISTERED NURSE DETERMINATION OF PATIENT CARE NEEDS, ADDITIONAL LICENSED AND NONLICENSED STAFF, SUCH AS LICENSED PRACTICAL NURSES AND CERTIFIED NURSING ASSISTANTS, SHALL BE ASSIGNED.

C. THE CHIEF NURSING OFFICER, OR A DESIGNEE, SHALL DEVELOP A WRITTEN STAFFING PLAN BASED ON INDIVIDUAL PATIENT CARE NEEDS DETERMINED BY THE PATIENT CLASSIFICATION SYSTEM. THE STAFFING PLAN SHALL BE DEVELOPED AND IMPLEMENTED FOR EACH PATIENT CARE UNIT AND SHALL SPECIFY INDIVIDUAL PATIENT

CARE REQUIREMENTS AND THE STAFFING LEVELS FOR DIRECT CARE REGISTERED NURSES AND OTHER LICENSED NURSES AND CERTIFIED PERSONNEL. THE STAFFING LEVEL FOR DIRECT CARE REGISTERED NURSES ON ANY SHIFTS SHALL NOT FALL BELOW THE REQUIREMENTS OF THIS ARTICLE. THE PLAN SHALL BE DOCUMENTED AND POSTED ON THE UNIT FOR PUBLIC VIEW ON A DAY-TO-DAY, SHIFT-BY-SHIFT BASIS AND SHALL INCLUDE THE FOLLOWING:

1. STAFFING REQUIREMENTS AS DETERMINED BY THE PATIENT CLASSIFICATION SYSTEM FOR EACH UNIT.

2. THE ACTUAL STAFF AND STAFF MIX PROVIDED.

3. THE VARIANCE BETWEEN REQUIRED AND ACTUAL STAFFING PATTERNS.

D. IN ADDITION TO THE DOCUMENTATION REQUIRED IN SUBSECTION C OF THIS SECTION, THE HOSPITAL SHALL KEEP A RECORD OF THE ACTUAL DIRECT CARE REGISTERED NURSE, LICENSED PRACTICAL NURSE AND CERTIFIED NURSING ASSISTANT ASSIGNMENTS TO INDIVIDUAL PATIENTS BY LICENSURE CATEGORY, DOCUMENTED ON A DAY-TO-DAY, SHIFT-BY-SHIFT BASIS. THE HOSPITAL SHALL RETAIN:

1. THE STAFFING PLAN REQUIRED IN SUBSECTION C OF THIS SECTION FOR TWO YEARS.

2. THE RECORD OF THE ACTUAL DIRECT CARE REGISTERED NURSE, LICENSED PRACTICAL NURSE AND CERTIFIED NURSING ASSISTANT ASSIGNMENTS BY LICENSURE AND NON-LICENSURE CATEGORY.

E. THE RELIABILITY OF THE PATIENT CLASSIFICATION SYSTEM FOR VALIDATING STAFFING REQUIREMENTS MUST BE REVIEWED AT LEAST ANNUALLY BY A COMMITTEE APPOINTED BY THE CHIEF NURSING OFFICER TO DETERMINE WHETHER OR NOT THE SYSTEM ACCURATELY MEASURES INDIVIDUAL PATIENT CARE NEEDS. AT LEAST HALF OF THE MEMBERS OF THIS COMMITTEE MUST BE UNIT-SPECIFIC COMPETENT DIRECT CARE REGISTERED NURSES WHO PROVIDE DIRECT PATIENT CARE. IF DIRECT CARE REGISTERED NURSES ARE REPRESENTED UNDER A COLLECTIVE BARGAINING AGREEMENT, THE APPOINTMENT MUST BE MADE BY THE AUTHORIZED COLLECTIVE BARGAINING AGENT. IN CASE OF A DISPUTE, THE DIRECT CARE REGISTERED NURSE ASSESSMENT PREVAILS.

F. IF THE REVIEW CONDUCTED PURSUANT TO SUBSECTION E OF THIS SECTION REVEALS THAT ADJUSTMENTS ARE NECESSARY TO ENSURE ACCURACY IN MEASURING PATIENT CARE NEEDS, THESE ADJUSTMENTS MUST BE IMPLEMENTED WITHIN THIRTY DAYS AFTER THAT DETERMINATION.

G. HOSPITALS SHALL DEVELOP AND DOCUMENT A PROCESS BY WHICH ALL INTERESTED STAFF MAY PROVIDE INPUT ABOUT THE SYSTEM'S REQUIRED REVISIONS AND THE OVERALL STAFFING PLAN.

H. THE ADMINISTRATOR OF NURSING SERVICES SHALL NOT BE DESIGNATED TO SERVE AS A CHARGE NURSE OR TO HAVE DIRECT PATIENT CARE RESPONSIBILITY.

I. DIRECT CARE REGISTERED NURSING PERSONNEL SHALL:

1. PROVIDE DIRECT PATIENT CARE TO ASSIGNED PATIENTS.

2. PERFORM ALL THE ESSENTIAL FUNCTIONS OF A HOSPITAL DIRECT CARE PROFESSIONAL NURSE AS PRESCRIBED IN THIS ARTICLE.

3. PROVIDE CLINICAL SUPERVISION AND COORDINATION OF THE CARE GIVEN BY LICENSED PRACTICAL NURSES AND UNLICENSED NURSING PERSONNEL.

4. EXERCISE INDEPENDENT PROFESSIONAL JUDGMENT AND AUTHORITY IN MAKING DECISIONS AND TAKING ACTIONS RELATING TO PATIENT CARE THAT ARE IN THE EXCLUSIVE INTERESTS OF PATIENTS AND NECESSARY AND APPROPRIATE TO COMPETENT PERFORMANCE AND SATISFACTION OF PROFESSIONAL DUTIES AND FIDUCIARY OBLIGATIONS OF A DIRECT CARE REGISTERED NURSE, INCLUDING THE DUTY OF PATIENT ADVOCACY.

J. EACH HOSPITAL UNIT SHALL HAVE AT LEAST ONE DIRECT CARE REGISTERED NURSE ASSIGNED, PRESENT AND RESPONSIBLE FOR PATIENT CARE IN THE UNIT ON EACH SHIFT.

K. UNLICENSED PERSONNEL MAY BE USED AS NEEDED TO ASSIST WITH SIMPLE NURSING PROCEDURES, SUBJECT TO THE REQUIREMENTS OF COMPETENCY VALIDATION AND THE LIMITATIONS PRESCRIBED IN THIS ARTICLE. HOSPITAL POLICIES AND PROCEDURES SHALL DESCRIBE THE RESPONSIBILITIES OF UNLICENSED PERSONNEL AND LIMIT THEIR DUTIES TO TASKS THAT DO NOT REQUIRE LICENSURE AS A REGISTERED OR PRACTICAL NURSE.

L. NURSING PERSONNEL FROM TEMPORARY NURSING AGENCIES ARE NOT RESPONSIBLE FOR PATIENT CARE ON ANY HOSPITAL UNIT UNLESS THEY HAVE DEMONSTRATED AND VALIDATED CLINICAL COMPETENCY ON THE ASSIGNED UNIT.

M. HOSPITALS THAT USE TEMPORARY NURSING AGENCIES SHALL ADHERE TO A WRITTEN PROCEDURE TO ORIENT AND EVALUATE PERSONNEL FROM THESE SOURCES. TO ENSURE CLINICAL COMPETENCE OF TEMPORARY AGENCY PERSONNEL, THESE PROCEDURES SHALL REQUIRE THAT PERSONNEL FROM TEMPORARY NURSING AGENCIES BE EVALUATED AS OFTEN, OR MORE OFTEN, THAN STAFF EMPLOYED DIRECTLY BY THE HOSPITAL.

N. ALL REGISTERED AND LICENSED PRACTICAL NURSES USED IN THE HOSPITAL SHALL HAVE CURRENT LICENSES. THE HOSPITAL SHALL ESTABLISH A METHOD TO DOCUMENT CURRENT LICENSURE.

O. HOSPITALS SHALL PLAN FOR ROUTINE FLUCTUATIONS, SUCH AS ADMISSIONS, DISCHARGES AND TRANSFERS IN PATIENT CENSUS. IF A HEALTH CARE EMERGENCY CAUSES A CHANGE IN THE NUMBER OF PATIENTS ON A UNIT, THE HOSPITAL MUST DEMONSTRATE THAT IMMEDIATE AND DILIGENT EFFORTS WERE MADE TO MAINTAIN REQUIRED STAFFING LEVELS. FOR THE PURPOSES OF THIS SUBSECTION, "HEALTH CARE EMERGENCY" MEANS AN EMERGENCY DECLARED BY THE FEDERAL GOVERNMENT OR THE HEAD OF A STATE, LOCAL, COUNTY OR MUNICIPAL GOVERNMENT.

36-1311. Minimum staffing requirements; prohibitions; competency; definition

A. EACH HOSPITAL MUST PROVIDE MINIMUM STAFFING BY DIRECT CARE REGISTERED NURSES ACCORDING TO THE GENERAL REQUIREMENTS OF THIS SECTION AND THE HOSPITAL UNIT DIRECT CARE REGISTERED NURSE-TO-PATIENT RATIOS PRESCRIBED BY SECTION 36-1309. STAFFING FOR PATIENT CARE TASKS NOT REQUIRING A DIRECT CARE REGISTERED NURSE IS NOT INCLUDED IN THESE RATIOS AND MUST BE DETERMINED PURSUANT TO THE PATIENT CLASSIFICATION SYSTEM PRESCRIBED PURSUANT TO SECTION 36-1310. THE DIRECT CARE REGISTERED NURSE, LICENSED PRACTICAL NURSE AND CERTIFIED NURSING ASSISTANT SKILL-MIX REQUIRED TO MEET THE INDIVIDUAL NEEDS OF THE PATIENT MUST BE BASED ON THE ASSESSMENT OF THE DIRECT CARE REGISTERED NURSE.

B. A HOSPITAL SHALL NOT ASSIGN A DIRECT CARE REGISTERED NURSE TO A HOSPITAL UNIT OR CLINICAL AREA UNLESS THAT HOSPITAL AND THE DIRECT CARE REGISTERED NURSE DETERMINE THAT THE NURSE HAS DEMONSTRATED VALIDATED CURRENT COMPETENCE IN PROVIDING CARE IN THAT AREA AND HAS RECEIVED AND COMPLETED ORIENTATION TO THAT HOSPITAL'S CLINICAL AREA SUFFICIENT TO PROVIDE SAFE, THERAPEUTIC AND COMPETENT CARE TO PATIENTS IN THAT AREA. THE POLICIES AND PROCEDURES OF THE HOSPITAL MUST CONTAIN THE HOSPITAL'S CRITERIA FOR MAKING THIS DETERMINATION.

C. DIRECT CARE REGISTERED NURSE-TO-PATIENT RATIOS REPRESENT THE MAXIMUM NUMBER OF PATIENTS THAT CAN BE ASSIGNED TO ONE DIRECT CARE REGISTERED NURSE AT ALL TIMES.

D. AVERAGING OF THE NUMBER OF PATIENTS AND THE TOTAL NUMBER OF DIRECT CARE REGISTERED NURSES ON THE HOSPITAL UNIT DURING ANY ONE SHIFT OR OVER ANY PERIOD OF TIME IS PROHIBITED.

E. ONLY DIRECT CARE REGISTERED NURSES WHO PROVIDE DIRECT PATIENT CARE SHALL BE INCLUDED IN THE RATIOS. NURSE ADMINISTRATORS, NURSE SUPERVISORS, NURSE MANAGERS, CHARGE NURSES AND CASE MANAGERS SHALL NOT BE INCLUDED IN THE CALCULATION OF THE DIRECT CARE REGISTERED NURSE-TO-PATIENT RATIO. ONLY DIRECT CARE REGISTERED NURSES SHALL RELIEVE OTHER DIRECT CARE REGISTERED NURSES DURING BREAKS, MEALS AND OTHER ROUTINE, EXPECTED ABSENCES FROM THE HOSPITAL UNIT.

F. ONLY DIRECT CARE REGISTERED NURSES SHALL BE ASSIGNED TO NEONATAL INTENSIVE CARE UNITS, WHICH SPECIFICALLY REQUIRE ONE DIRECT CARE REGISTERED NURSE TO TWO OR FEWER INFANTS AT ALL TIMES.

G. IN AN EMERGENCY DEPARTMENT, ONLY DIRECT CARE REGISTERED NURSES SHALL BE ASSIGNED TO TRIAGE AND CRITICAL TRAUMA PATIENTS. THE USE OF RAPID RESPONSE TEAMS IS PROHIBITED.

H. CURRENT DOCUMENTED, DEMONSTRATED AND VALIDATED COMPETENCY IS REQUIRED FOR ALL DIRECT CARE REGISTERED NURSES AND MUST BE DETERMINED BASED ON THE SATISFACTORY PERFORMANCE OF THE STATUTORILY RECOGNIZED DUTIES OF THE REGISTERED NURSE PRESCRIBED PURSUANT TO TITLE 32, CHAPTER 15 AND THE STANDARDS REQUIRED PURSUANT TO THIS ARTICLE THAT ARE SPECIFIC TO EACH HOSPITAL UNIT.

I. FOR THE PURPOSES OF THIS SECTION, "ASSIGNED" MEANS THAT THE DIRECT CARE REGISTERED NURSE IS RESPONSIBLE FOR PROVIDING CARE TO A PARTICULAR PATIENT WITHIN THE NURSE'S VALIDATED COMPETENCY.

36-1312. Hospital units; identification; requirements

A. IDENTIFYING A HOSPITAL UNIT OR CLINICAL PATIENT CARE AREA BY A NAME OR TERM OTHER THAN THOSE USED PURSUANT TO SECTION 36-1309 DOES NOT AFFECT THE REQUIREMENT TO STAFF AT THE DIRECT CARE REGISTERED NURSE-TO-PATIENT RATIOS IDENTIFIED FOR THE LEVEL OF INTENSITY OR TYPE OF CARE PRESCRIBED IN SECTION 36-1311.

B. PATIENTS SHALL BE CARED FOR ONLY ON HOSPITAL UNITS OR CLINICAL PATIENT CARE AREAS WHERE THE LEVEL OF INTENSITY, TYPE OF CARE AND DIRECT CARE REGISTERED NURSE-TO-PATIENT RATIOS MEET THE INDIVIDUAL REQUIREMENTS AND NEEDS

OF EACH PATIENT. THE USE OF PATIENT ACUITY-ADJUSTABLE UNITS OR CLINICAL PATIENT CARE AREAS IS PROHIBITED.

36-1313. Prohibited activities

A. A HOSPITAL SHALL NOT DIRECTLY ASSIGN ANY UNLICENSED PERSONNEL TO PERFORM DIRECT CARE REGISTERED NURSE FUNCTIONS INSTEAD OF CARE DELIVERED BY A LICENSED REGISTERED NURSE AND SHALL NOT ASSIGN UNLICENSED PERSONNEL TO PERFORM DIRECT CARE REGISTERED NURSE FUNCTIONS UNDER THE SUPERVISION OF A DIRECT CARE REGISTERED NURSE.

B. UNLICENSED PERSONNEL SHALL NOT PERFORM TASKS THAT REQUIRE THE CLINICAL ASSESSMENT, JUDGMENT AND SKILL OF A LICENSED REGISTERED NURSE, INCLUDING THE FOLLOWING:

1. NURSING ACTIVITIES THAT REQUIRE NURSING ASSESSMENT AND JUDGMENT DURING IMPLEMENTATION.

2. PHYSICAL, PSYCHOLOGICAL AND SOCIAL ASSESSMENTS THAT REQUIRE NURSING JUDGMENT, INTERVENTION, REFERRAL OR FOLLOW-UP.

3. FORMULATION OF A PLAN OF NURSING CARE.

4. EVALUATION OF THE PATIENT'S RESPONSE TO THE CARE PROVIDED.

5. ADMINISTRATION OF MEDICATIONS.

6. VENIPUNCTURE OR INTRAVENOUS THERAPY.

7. PARENTERAL OR TUBE FEEDINGS.

8. INVASIVE PROCEDURES, INCLUDING INSERTING NASOGASTRIC TUBES, INSERTING CATHETERS OR TRACHEAL SUCTIONING.

9. EDUCATING PATIENTS AND THEIR FAMILIES CONCERNING THE PATIENT'S HEALTH CARE PROBLEMS, INCLUDING POSTDISCHARGE CARE.

C. A HOSPITAL MAY NOT IMPOSE MANDATORY OVERTIME REQUIREMENTS TO MEET THE STAFFING RATIOS PRESCRIBED IN SECTION 36-1309.

36-1314. Hospital nursing practice standards; patient advocacy

A. A DIRECT CARE REGISTERED NURSE WHO IS EMPLOYED IN A HOSPITAL MUST:

1. PROVIDE SAFE, THERAPEUTIC AND COMPETENT NURSING CARE TO ASSIGNED PATIENTS.

2. ASSESS EACH MEDICAL ORDER AND, BEFORE ACTING ON THE ORDER, DETERMINE IF THE ORDER IS IN THE BEST INTEREST OF THE PATIENT AND IF IT WAS INITIATED BY A PERSON LEGALLY AUTHORIZED TO INITIATE SUCH AN ORDER. THE REFUSAL OF A DIRECT CARE REGISTERED NURSE TO IMPLEMENT AN ORDER THAT THE NURSE DETERMINES IS NOT IN THE PATIENT'S BEST INTEREST IS AN EXERCISE OF THE DIRECT CARE REGISTERED NURSE'S DUTY AND RIGHT AS A PATIENT ADVOCATE.

3. PERFORM CONTINUOUS AND ONGOING PATIENT ASSESSMENTS OF THE PATIENT'S CONDITION BASED ON THE INDEPENDENT PROFESSIONAL JUDGMENT OF THE DIRECT CARE REGISTERED NURSE. PATIENT ASSESSMENT REQUIRES DIRECT OBSERVATION BY THE DIRECT CARE REGISTERED NURSE OF THE PATIENT'S SIGNS AND SYMPTOMS OF ILLNESS, REACTION TO TREATMENT, BEHAVIOR AND PHYSICAL CONDITION, AND INTERPRETATION OF INFORMATION OBTAINED FROM THE PATIENT AND OTHERS, INCLUDING OTHER CAREGIVERS ON THE HEALTH TEAM. ONLY A DIRECT CARE REGISTERED NURSE SHALL PERFORM PATIENT ASSESSMENTS. LICENSED PRACTICAL NURSES MAY ASSIST DIRECT CARE REGISTERED NURSES IN DATA COLLECTION. FOR THE PURPOSES OF THIS PARAGRAPH,

"ASSESSMENT" MEANS THE COLLECTION OF DATA BY THE DIRECT CARE REGISTERED NURSE AND THE ANALYSIS, SYNTHESIS AND EVALUATION OF THAT DATA.

4. PLAN, IMPLEMENT AND EVALUATE THE NURSING CARE PROVIDED TO EACH PATIENT. THE PLANNING AND DELIVERY OF PATIENT CARE MUST REFLECT ALL ELEMENTS OF THE NURSING PROCESS, INCLUDING ASSESSMENT, NURSING DIAGNOSIS, PLANNING, INTERVENTION, EVALUATION AND, AS CIRCUMSTANCES REQUIRE, PATIENT ADVOCACY, AND MUST BE INITIATED BY A DIRECT CARE REGISTERED NURSE AT THE TIME OF ADMISSION.

B. BEFORE ACCEPTING A PATIENT ASSIGNMENT, A DIRECT CARE REGISTERED NURSE MUST HAVE THE NECESSARY KNOWLEDGE, JUDGMENT, SKILLS AND ABILITY TO PROVIDE THE REQUIRED CARE. THE DIRECT CARE REGISTERED NURSE SHALL DETERMINE IF THE NURSE IS CLINICALLY COMPETENT TO PERFORM THE REQUIRED NURSING CARE IN A PARTICULAR HOSPITAL UNIT AND WITH A PARTICULAR DIAGNOSIS, CONDITION, PROGNOSIS OR OTHER DETERMINATIVE CHARACTERISTIC OF NURSING CARE. IF THE DIRECT CARE REGISTERED NURSE IS NOT CLINICALLY COMPETENT TO PERFORM THE CARE REQUIRED, THE NURSE SHALL NOT ACCEPT THE PATIENT CARE ASSIGNMENT. THE REFUSAL OF A DIRECT CARE REGISTERED NURSE TO ACCEPT A PATIENT CARE ASSIGNMENT IS AN EXERCISE OF THE DIRECT CARE REGISTERED NURSE'S DUTY AND RIGHT OF PATIENT ADVOCACY.

36-1315. Consumer information; toll-free telephone number

A. A HOSPITAL THAT IS SUBJECT TO THIS ARTICLE MUST POST IN A PLACE THAT IS EASILY VISIBLE TO THE PUBLIC THE FOLLOWING FOR EACH SHIFT OF EACH DAY:

1. THE RATIO OF DIRECT CARE REGISTERED NURSING STAFF TO PATIENTS ON EACH UNIT.

2. THE STAFFING REQUIREMENTS AS DETERMINED BY THE PATIENT CLASSIFICATION SYSTEM FOR EACH UNIT.

3. THE ACTUAL STAFF AND STAFF RATIO PROVIDED.

4. THE VARIANCE BETWEEN THE REQUIRED AND THE ACTUAL STAFFING PATTERNS.

B. A HOSPITAL MUST PROVIDE EACH PATIENT WHO IS ADMITTED TO THE HOSPITAL FOR INPATIENT CARE WITH THE TOLL-FREE TELEPHONE NUMBER PRESCRIBED BY THE DEPARTMENT OF HEALTH SERVICES TO REPORT INADEQUATE STAFFING OR CARE.

36-1316. Disciplinary action; civil penalty

A HOSPITAL THAT VIOLATES THIS ARTICLE IS SUBJECT TO SUSPENSION OR REVOCATION OF ITS LICENSE TO OPERATE AND IS SUBJECT TO A CIVIL PENALTY OF NOT MORE THAN TWENTY-FIVE THOUSAND DOLLARS FOR EACH VIOLATION OF THIS ARTICLE AND AN ADDITIONAL CIVIL PENALTY OF TEN THOUSAND DOLLARS PER NURSING UNIT SHIFT UNTIL THE VIOLATION IS CORRECTED.

36-1317. Hospital acuity-based patient classification system; minimum requirements

A. EVERY HOSPITAL SHALL ADOPT AN ACUITY-BASED PATIENT CLASSIFICATION SYSTEM, INCLUDING A WRITTEN NURSING CARE STAFFING PLAN FOR EACH HOSPITAL UNIT, SHALL IMPLEMENT, EVALUATE, MODIFY AND IMPLEMENT A MODIFIED PLAN AS NECESSARY AND APPROPRIATE PURSUANT TO THIS SECTION AND SHALL PROVIDE DIRECT CARE NURSE STAFFING BASED ON INDIVIDUAL PATIENT NEED DETERMINED PURSUANT TO THIS SECTION. A VALID PATIENT CLASSIFICATION SYSTEM SHALL BE USED TO

DETERMINE ADDITIONAL DIRECT CARE REGISTERED NURSING STAFFING ABOVE THE MINIMUM STAFFING RATIOS REQUIRED BY THIS CHAPTER AND ANY STAFFING BY LICENSED PRACTICAL NURSES OR UNLICENSED NURSING PERSONNEL.

B. THE PATIENT CLASSIFICATION SYSTEM USED BY A HOSPITAL FOR DETERMINING PATIENT NURSING CARE NEEDS SHALL INCLUDE, AT A MINIMUM, THE FOLLOWING ELEMENTS:

1. A METHOD TO PREDICT NURSING CARE REQUIREMENTS OF INDIVIDUAL PATIENTS AND AS DETERMINED BY DIRECT CARE REGISTERED NURSE ASSESSMENTS OF INDIVIDUAL PATIENTS.

2. A METHOD THAT PROVIDES FOR SUFFICIENT DIRECT CARE REGISTERED NURSING STAFFING TO ENSURE THAT ASSESSMENT, NURSING DIAGNOSIS, PLANNING AND INTERVENTION ARE PERFORMED IN THE PLANNING AND DELIVERY OF CARE FOR EACH PATIENT.

3. A METHOD TO ENSURE THAT THE PATIENT CARE NEEDS OF INDIVIDUAL PATIENTS IS THE EXCLUSIVE DETERMINANT OF DIRECT CARE REGISTERED NURSING STAFFING AND THAT FISCAL AND BUDGET CONSIDERATIONS ARE NOT USED FOR AND DO NOT INFLUENCE THE PREDICTION OR DETERMINATION OF DIRECT CARE REGISTERED NURSING STAFFING LEVELS.

4. AN ESTABLISHED METHOD BY WHICH THE AMOUNT OF NURSING CARE NEEDED FOR EACH CATEGORY OF PATIENT IS VALIDATED.

5. A METHOD FOR VALIDATION OF THE RELIABILITY OF THE PATIENT CLASSIFICATION SYSTEM.

C. EACH HOSPITAL'S PATIENT CLASSIFICATION SYSTEM SHALL BE FULLY TRANSPARENT IN ALL RESPECTS, INCLUDING DISCLOSURE OF DETAILED DOCUMENTATION OF THE METHODOLOGY USED BY THE SYSTEM TO PREDICT NURSING STAFFING, IDENTIFYING EACH FACTOR, ASSUMPTION AND VALUE USED IN APPLYING THE METHODOLOGY, EXPLAINING THE SCIENTIFIC AND EMPIRICAL BASIS FOR EACH ASSUMPTION AND VALUE AND CERTIFICATION BY A KNOWLEDGEABLE AND AUTHORIZED REPRESENTATIVE OF THE HOSPITAL THAT THE DISCLOSURES REGARDING METHODS USED FOR TESTING AND VALIDATING THE ACCURACY AND RELIABILITY OF THE SYSTEM ARE TRUE AND COMPLETE. EACH HOSPITAL SHALL INCLUDE IN THE DOCUMENTATION REQUIRED BY THIS SECTION AN EVALUATION AND REPORT ON THE ADEQUACY AND ACCURACY OF THIS DOCUMENTATION ON AT LEAST AN ANNUAL BASIS UNDERTAKEN AND PREPARED BY A COMMITTEE CONSISTING EXCLUSIVELY OF DIRECT CARE REGISTERED NURSES WHO HAVE PROVIDED DIRECT PATIENT CARE IN THE UNITS COVERED BY THE PATIENT CLASSIFICATION SYSTEM. IF DIRECT CARE REGISTERED NURSES ARE REPRESENTED FOR COLLECTIVE BARGAINING PURPOSES, ALL DIRECT CARE REGISTERED NURSES ON THE COMMITTEE SHALL BE APPOINTED BY THE AUTHORIZED COLLECTIVE BARGAINING AGENT.

D. THE DOCUMENTATION REQUIRED BY THIS SECTION SHALL BE SUBMITTED IN ITS ENTIRETY TO THE DEPARTMENT OF HEALTH SERVICES AS A MANDATORY CONDITION OF HOSPITAL LICENSURE, WITH A CERTIFICATION BY THE CHIEF NURSE OFFICER FOR THE HOSPITAL THAT IT COMPLETELY AND ACCURATELY REFLECTS IMPLEMENTATION OF A VALID PATIENT CLASSIFICATION SYSTEM USED TO DETERMINE NURSING SERVICE STAFFING BY THE HOSPITAL FOR EVERY SHIFT ON EVERY UNIT IN WHICH PATIENTS RESIDE AND RECEIVE CARE. THE CERTIFICATION SHALL BE EXECUTED BY THE CHIEF NURSING

OFFICER UNDER PENALTY OF PERJURY AND SHALL CONTAIN AN EXPRESS ACKNOWLEDGEMENT THAT ANY FALSE STATEMENT IN THE CERTIFICATION CONSTITUTES FRAUD AND SUBJECTS THAT PERSON TO CRIMINAL AND CIVIL PROSECUTION AND PENALTIES. THE DOCUMENTATION IS AVAILABLE FOR PUBLIC INSPECTION IN ITS ENTIRETY IN ACCORDANCE WITH PROCEDURES ESTABLISHED BY APPROPRIATE ADMINISTRATIVE REGULATION CONSISTENT WITH THIS CHAPTER.

36-1318. Statewide uniform patient classification standards; advisory committee

A. THE PATIENT CLASSIFICATION SYSTEM FOR DETERMINING HOSPITAL UNIT STAFFING MANDATED BY THIS CHAPTER REQUIRES A FULLY TRANSPARENT, DIRECT CARE REGISTERED NURSE OPERATED AND ASSESSMENT-CONTROLLED ACUITY SYSTEM. HOSPITALS ARE PROHIBITED FROM CREATING, ACQUIRING, APPLYING OR IMPLEMENTING ANY METHODOLOGY, TECHNOLOGY, SYSTEM, DEVICE, COMPUTER HARDWARE OR SOFTWARE OR OTHER MEANS OF DETERMINING NURSING CARE REQUIREMENTS AND STAFFING NEEDS FOR USE IN COMPLYING WITH THE NURSE STAFFING STANDARDS OF THIS CHAPTER THAT:

1. INCORPORATES OR RELIES ON, IN WHOLE OR IN PART, ON ANY MEASUREMENT OR DETERMINATIVE FACTOR OTHER THAN INDIVIDUAL PATIENT NEED.

2. EMPLOYS ANY FORMULA, METHOD, ASSUMPTION, MEASUREMENT, CONDITION OR QUALIFICATION FOR DETERMINING INDIVIDUAL PATIENT NEED OTHER THAN THE PATIENT ASSESSMENTS PERFORMED BY DIRECT CARE REGISTERED NURSES RESPONSIBLE FOR NURSING CARE ON THE HOSPITAL UNIT.

3. PURPORTS TO BE PROPRIETARY AND NOT SUBJECT TO DISCLOSURE IN ANY RESPECT OR IS LIMITED BY ANY CONDITION OR QUALIFICATION THAT PROHIBITS, RESTRICTS OR INTERFERES IN ANY MANNER WITH COMPLETE TRANSPARENCY AND DISCLOSURE OF ALL OPERATIONAL ELEMENTS, METHODOLOGIES, FORMULAE, ASSUMPTIONS, AND VALUES.

B. THE DEPARTMENT OF HEALTH SERVICES SHALL DEVELOP UNIFORM STATEWIDE STANDARDS FOR A STANDARDIZED ACUITY TOOL FOR USE IN LICENSED HOSPITAL IMPLEMENTATION OF A PATIENT CLASSIFICATION SYSTEM AS REQUIRED BY THIS CHAPTER. THE DIRECTOR OF THE DEPARTMENT OF HEALTH SERVICES SHALL APPOINT AN ADVISORY COMMITTEE TO DEVELOP PROPOSED STANDARDS FOR THE DIRECTOR'S CONSIDERATION. THE ADVISORY COMMITTEE SHALL CONSIST OF NOT MORE THAN THIRTY-FIVE MEMBERS, AT LEAST EIGHTEEN OF WHOM ARE CURRENTLY LICENSED REGISTERED NURSES EMPLOYED AS HOSPITAL DIRECT CARE REGISTERED NURSES AND THE REMAINING SEVENTEEN OF WHOM INCLUDE TECHNICAL AND SCIENTIFIC EXPERTS IN THE SPECIALIZED FIELDS INVOLVED IN THE DESIGN AND DEVELOPMENT OF A PATIENT CLASSIFICATION SYSTEM THAT CONTAINS THE ELEMENTS AND MEETS THE REQUIREMENTS OF THIS CHAPTER. COMMITTEE MEMBERS SERVE AT THE PLEASURE OF THE DIRECTOR AND ARE NOT ELIGIBLE FOR COMPENSATION OR REIMBURSEMENT OF EXPENSES.

C. A PERSON WHO HAS ANY EMPLOYMENT, COMMERCIAL, PROPRIETARY, FINANCIAL OR OTHER PERSONAL INTEREST IN THE DEVELOPMENT, MARKETING OR HOSPITAL UTILIZATION OF ANY PRIVATE PATIENT CLASSIFICATION SYSTEM PRODUCT OR RELATED METHODOLOGY, TECHNOLOGY OR COMPONENT SYSTEM IS NOT ELIGIBLE TO SERVE ON THE ADVISORY COMMITTEE. A CANDIDATE FOR APPOINTMENT TO THE COMMITTEE MUST FIRST

FILE A VERIFIED AND SIGNED DISCLOSURE OF INTEREST STATEMENT WITH THE DEPARTMENT. THESE DOCUMENTS ARE SUBJECT TO PUBLIC INSPECTION.

ARTICLE 2. PATIENT SAFETY AND ADVOCACY

36-1321. Direct care registered nurses; patient advocacy; duties and rights

A. A DIRECT CARE REGISTERED NURSE HAS THE PROFESSIONAL OBLIGATION AND THEREFORE THE RIGHT TO ACT AS THE PATIENT'S ADVOCATE, AS CIRCUMSTANCES REQUIRE, BY INITIATING ACTION TO IMPROVE HEALTH CARE OR TO CHANGE DECISIONS OR ACTIVITIES THAT IN THE PROFESSIONAL JUDGMENT OF THE DIRECT CARE REGISTERED NURSE ARE AGAINST THE INTERESTS OR WISHES OF THE PATIENT, OR BY GIVING THE PATIENT THE OPPORTUNITY TO MAKE INFORMED DECISIONS ABOUT HEALTH CARE BEFORE IT IS PROVIDED.

B. IN THE COURSE OF PERFORMING THE RESPONSIBILITIES AND ESSENTIAL FUNCTIONS DESCRIBED IN THIS ARTICLE, THE DIRECT CARE REGISTERED NURSE ASSIGNED TO A PATIENT SHALL RECEIVE ORDERS INITIATED BY PHYSICIANS AND OTHER LEGALLY AUTHORIZED HEALTH CARE PROFESSIONALS WITHIN THEIR SCOPE OF LICENSURE REGARDING PATIENT CARE SERVICES TO BE PROVIDED TO THE PATIENT, INCLUDING WITHOUT LIMITATION, THE ADMINISTRATION OF MEDICATIONS AND THERAPEUTIC AGENTS NECESSARY TO IMPLEMENT A TREATMENT, DISEASE PREVENTION OR REHABILITATIVE REGIMEN. THE DIRECT CARE REGISTERED NURSE SHALL ASSESS EACH ORDER BEFORE IMPLEMENTATION TO DETERMINE IF THE ORDER IS:

1. IN THE BEST INTERESTS OF THE PATIENT.

2. INITIATED BY A PERSON LEGALLY AUTHORIZED TO ISSUE THE ORDER.

3. IN ACCORDANCE WITH APPLICABLE LAW AND REGULATION GOVERNING NURSING CARE.

C. IF THE DIRECT CARE REGISTERED NURSE DETERMINES THE CRITERIA PRESCRIBED IN SUBSECTION B HAVE NOT BEEN SATISFIED WITH RESPECT TO A PARTICULAR ORDER OR HAS SOME DOUBT REGARDING THE MEANING OR CONFORMANCE OF THE ORDER WITH THESE CRITERIA, THE NURSE SHALL SEEK CLARIFICATION FROM THE INITIATOR OF THE ORDER, THE PATIENT'S PHYSICIAN OR ANOTHER APPROPRIATE MEDICAL OFFICER. THE DIRECT CARE REGISTERED NURSE MUST OBTAIN CLARIFICATION BEFORE IMPLEMENTING THE ORDER.

D. ON CLARIFICATION, IF THE DIRECT CARE REGISTERED NURSE DETERMINES THE CRITERIA FOR IMPLEMENTATION OF AN ORDER HAVE NOT BEEN MET, THE NURSE MAY REFUSE IMPLEMENTATION ON THE BASIS THAT THE ORDER IS NOT IN THE BEST INTERESTS OF THE PATIENT. SEEKING CLARIFICATION OF AN ORDER OR REFUSING AN ORDER AS DESCRIBED IN THIS SECTION CONSTITUTES AN EXERCISE OF THE DIRECT CARE REGISTERED NURSE'S DUTY AND RIGHT OF PATIENT ADVOCACY.

36-1322. Free speech; whistle-blowing; duty to act; protection against retaliation; definition

A. A HOSPITAL SHALL NOT DISCHARGE FROM DUTY OR OTHERWISE RETALIATE AGAINST A DIRECT CARE REGISTERED NURSE WHO IS RESPONSIBLE FOR PATIENT CARE AND WHO REPORTS UNSAFE PRACTICES OR VIOLATIONS OF HOSPITAL POLICIES OR APPLICABLE LAWS.

B. ALL DIRECT CARE REGISTERED NURSES AND OTHER HEALTH PROFESSIONALS WHO ARE RESPONSIBLE FOR PATIENT CARE HAVE THE RIGHT OF FREE SPEECH AND ARE PROTECTED IN THE EXERCISE OF THAT RIGHT AS PROVIDED IN THIS ARTICLE, BOTH DURING WORKING HOURS AND DURING OFF-DUTY HOURS. THE RIGHT OF FREE SPEECH PROTECTED BY THIS SUBSECTION IS A NECESSARY INCIDENT OF THE REGISTERED NURSE'S DUTY OF PATIENT ADVOCACY AND IS ESSENTIAL TO PROTECTING THE HEALTH AND SAFETY OF HOSPITAL PATIENTS AND THE PEOPLE OF THIS STATE.

C. THE FREE SPEECH PROTECTED BY THIS SECTION INCLUDES ANY TYPE OF SPOKEN, GESTURED, WRITTEN, PRINTED OR ELECTRONICALLY COMMUNICATED EXPRESSION CONCERNING ANY MATTER RELATED TO OR AFFECTING SAFE, THERAPEUTIC AND COMPETENT DIRECT NURSING CARE BY DIRECT CARE REGISTERED NURSES AND OTHER HEALTH CARE PROFESSIONALS GENERALLY WITHIN THE HEALTH CARE INDUSTRY.

D. THE CONTENT OF SPEECH PROTECTED BY THIS SECTION INCLUDES:

1. THE FACTS AND CIRCUMSTANCES OF PARTICULAR EVENTS.

2. PATIENT CARE PRACTICES.

3. INSTITUTIONAL ACTIONS, POLICIES AND CONDITIONS THAT MAY FACILITATE OR IMPEDE COMPETENT AND SAFE NURSING PRACTICE AND PATIENT CARE.

4. ADVERSE PATIENT OUTCOMES OR INCIDENTS.

5. SENTINEL AND REPORTABLE EVENTS.

6. ARGUMENTS IN SUPPORT OF OR AGAINST HOSPITAL POLICIES OR PRACTICES RELATING TO THE DELIVERY OF NURSING CARE BY A DIRECT CARE REGISTERED NURSE AND OTHER HEALTH PROFESSIONALS.

E. PROTECTED SPEECH UNDER THIS SECTION INCLUDES THE INTERNAL, EXTERNAL AND PUBLIC REPORTING OF ACTIONS, CONDUCT, EVENTS, PRACTICES AND OTHER MATTERS THAT ARE BELIEVED TO:

1. CONSTITUTE A VIOLATION OF FEDERAL, STATE OR LOCAL LAWS.

2. CONSTITUTE A BREACH OF APPLICABLE CODES OF PROFESSIONAL ETHICAL OBLIGATIONS APPLICABLE TO DIRECT CARE REGISTERED NURSES AND OTHER HEALTH PROFESSIONALS.

3. CONCERN MATTERS THAT THE REPORTING DIRECT CARE REGISTERED NURSE BELIEVES ARE APPROPRIATE OR REQUIRED TO:

(a) FURTHER AND SUPPORT THE DIRECT CARE REGISTERED NURSE'S EXERCISE OF PATIENT ADVOCACY DUTIES IN ORDER TO IMPROVE HEALTH CARE OR TO CHANGE DECISIONS OR ACTIVITIES THAT IN THE DIRECT CARE REGISTERED NURSE'S PROFESSIONAL JUDGMENT ARE AGAINST THE INTERESTS OR WISHES OF A PATIENT.

(b) ENSURE THAT A PATIENT IS AFFORDED A MEANINGFUL OPPORTUNITY TO MAKE INFORMED DECISIONS ABOUT HEALTH CARE BEFORE IT IS PROVIDED.

4. CONCERN MATTERS AS DESCRIBED IN PARAGRAPH 3 OF THIS SUBSECTION MADE IN AID AND SUPPORT OF THE EXERCISE OF PATIENT ADVOCACY DUTIES OF DIRECT CARE REGISTERED NURSE COLLEAGUES.

F. THIS SECTION DOES NOT AUTHORIZE DISCLOSURE OF PRIVATE AND CONFIDENTIAL PATIENT INFORMATION UNLESS DISCLOSURE IS:

1. REQUIRED BY LAW.

2. COMPELLED BY PROPER LEGAL PROCESS.

3. CONSENTED TO BY THE PATIENT.

4. PROVIDED IN CONFIDENCE TO REGULATORY OR ACCREDITATION AGENCIES OR TO OTHER GOVERNMENT ENTITIES FOR INVESTIGATIVE PURPOSES.

5. PURSUANT TO FORMAL OR INFORMAL COMPLAINTS OF UNLAWFUL OR IMPROPER PRACTICES FOR PURPOSES OF ACHIEVING CORRECTIVE AND REMEDIAL ACTION.

G. ENGAGING IN FREE SPEECH ACTIVITY AS DESCRIBED IN THIS SECTION CONSTITUTES AN EXERCISE OF THE DIRECT CARE REGISTERED NURSE'S DUTY AND RIGHT OF PATIENT ADVOCACY. THE SUBJECT MATTER OF FREE SPEECH ACTIVITY AS DESCRIBED IN THIS SECTION IS PRESUMED TO BE A MATTER OF PUBLIC CONCERN AND THE DISCLOSURES PROTECTED UNDER THIS SECTION ARE PRESUMED TO BE IN THE PUBLIC INTEREST.

H. FOR THE PURPOSES OF THIS ARTICLE, "HEALTH PROFESSIONAL" HAS THE SAME MEANING PRESCRIBED IN SECTION 32-3201.

36-1323. Ethical and fiduciary duties

A. A DIRECT CARE REGISTERED NURSE IS IN A FIDUCIARY RELATION TO AN ASSIGNED PATIENT AS TO MATTERS WITHIN THE SCOPE OF PRACTICE AND PROFESSIONAL RESPONSIBILITY OF THE NURSE TO PROVIDE SAFE, THERAPEUTIC AND COMPETENT NURSING CARE IN THE INTERESTS OF THE PATIENT. AS TO THESE MATTERS, THE DIRECT CARE REGISTERED NURSE RESPONSIBLE FOR A PATIENT SHALL PERFORM THE ESSENTIAL FUNCTIONS OF A DIRECT CARE REGISTERED NURSE EXCLUSIVELY IN THE INTERESTS OF THE PATIENT AND SHALL NOT BE INFLUENCED BY THE INTERESTS OF ANY THIRD PARTY OR THE DIRECTIVES OF ANY SUCH INTERESTED THIRD PARTY OR BY MOTIVES OTHER THAN THE ACCOMPLISHMENT OF THE NURSE'S PROFESSIONAL RESPONSIBILITY TO PROVIDE SAFE AND COMPETENT NURSING CARE IN THE INTERESTS OF AND FOR THE BENEFIT OF THE PATIENT.

B. A DIRECT CARE REGISTERED NURSE SHALL NOT BE INFLUENCED BY THE NURSE'S OWN PERSONAL INTERESTS OR BY THE INTERESTS OR DEMANDS OF A THIRD PARTY THAT CONFLICT WITH THE INTERESTS OF AN ASSIGNED PATIENT IN PERFORMING THE ESSENTIAL REGISTERED NURSING FUNCTIONS. THE REFUSAL BY A DIRECT CARE REGISTERED NURSE TO ENGAGE IN A CONFLICT OF INTEREST WITH RESPECT TO NURSING CARE FOR WHICH THE NURSE IS RESPONSIBLE CONSTITUTES AN EXERCISE OF THE REGISTERED NURSE'S DUTY AND RIGHT OF PATIENT ADVOCACY.

36-1324. Protected rights

A. A PERSON HAS THE RIGHT TO:

1. OPPOSE POLICIES, PRACTICES OR ACTIONS OF ANY HOSPITAL OR OTHER HEALTH CARE INSTITUTION THAT ARE ALLEGED TO VIOLATE, BREACH OR FAIL TO COMPLY WITH THIS ARTICLE.

2. COOPERATE, PROVIDE EVIDENCE, TESTIFY OR OTHERWISE SUPPORT OR PARTICIPATE IN ANY INVESTIGATION OR COMPLAINT PROCEEDING BROUGHT PURSUANT TO THIS ARTICLE.

B. BY VIRTUE OF THEIR PROFESSIONAL LICENSE AND ETHICAL OBLIGATIONS, DIRECT CARE REGISTERED NURSES HAVE A DUTY AND RIGHT TO ACT AND PROVIDE CARE EXCLUSIVELY IN THE INTERESTS OF PATIENTS AND TO ACT AS THE PATIENT'S ADVOCATE, AS CIRCUMSTANCES REQUIRE, BY INITIATING ACTION TO IMPROVE HEALTH CARE OR TO CHANGE DECISIONS OR ACTIVITIES THAT IN THE PROFESSIONAL JUDGMENT OF THE DIRECT CARE REGISTERED NURSES ARE AGAINST THE INTERESTS OR WISHES OF

ASSIGNED PATIENTS, OR BY GIVING THE PATIENT THE OPPORTUNITY TO MAKE INFORMED DECISIONS ABOUT HEALTH CARE BEFORE IT IS PROVIDED.

C. A PATIENT OF A HOSPITAL OR OTHER HEALTH CARE INSTITUTION AGGRIEVED BY THAT HOSPITAL'S OR INSTITUTION'S INTERFERENCE WITH THE FULL AND FREE EXERCISE OF PATIENT ADVOCACY DUTIES BY A DIRECT CARE REGISTERED NURSE MAY MAKE OR FILE A COMPLAINT AND MAY COOPERATE, PROVIDE EVIDENCE, TESTIFY OR OTHERWISE SUPPORT OR PARTICIPATE IN ANY INVESTIGATION OR COMPLAINT PROCEEDING BROUGHT PURSUANT TO THIS ARTICLE. A PATIENT IS AGGRIEVED IF THE PATIENT'S HEALTH OR SAFETY WAS JEOPARDIZED OR THE PATIENT WAS EXPOSED TO ADDITIONAL RISK OF INJURY, DISEASE, PAIN OR SUFFERING AS A CONSEQUENCE OF CONDITIONS OR CIRCUMSTANCES CAUSED IN WHOLE OR IN PART BY THE HOSPITAL'S OR INSTITUTION'S INTERFERENCE WITH PATIENT ADVOCACY RIGHTS OF A DIRECT CARE REGISTERED NURSE OR OTHER HEALTH PROFESSIONAL. ACTUAL PHYSICAL INJURY, DISEASE, PAIN OR SUFFERING IS NOT REQUIRED FOR A PATIENT TO HAVE STANDING TO FILE A COMPLAINT AND OBTAIN APPROPRIATE REMEDIES UNDER THIS ARTICLE.

D. A DIRECT CARE REGISTERED NURSE OF A HOSPITAL OR OTHER HEALTH CARE INSTITUTION AGGRIEVED BY THAT HOSPITAL'S OR INSTITUTION'S INTERFERENCE WITH THE FULL AND FREE EXERCISE OF PATIENT ADVOCACY DUTIES MAY MAKE OR FILE A COMPLAINT AND MAY COOPERATE, PROVIDE EVIDENCE, TESTIFY OR OTHERWISE SUPPORT OR PARTICIPATE IN ANY INVESTIGATION OR COMPLAINT PROCEEDING PURSUANT TO THIS ARTICLE.

36-1325. Prohibited acts

A. IT IS UNLAWFUL FOR ANY HOSPITAL OR OTHER HEALTH CARE INSTITUTION TO:

1. INTERFERE WITH, RESTRAIN, COERCE, INTIMIDATE OR DENY THE EXERCISE OF OR THE ATTEMPT TO EXERCISE BY ANY PERSON OF ANY RIGHT TO ACT PURSUANT TO THIS ARTICLE.

2. DISCRIMINATE OR RETALIATE AGAINST ANY PERSON FOR OPPOSING ANY POLICY, PRACTICE OR ACTION OF THE HOSPITAL OR OTHER HEALTH CARE INSTITUTION THAT IS ALLEGED TO VIOLATE, BREACH OR FAIL TO COMPLY WITH THIS ARTICLE.

3. MAKE, ADOPT OR ENFORCE ANY POLICY OR PRACTICE THAT DIRECTLY OR INDIRECTLY PROHIBITS, IMPEDES, DISCOURAGES, INTIMIDATES, COERCES OR INDUCES IN ANY MANNER A DIRECT CARE REGISTERED NURSE OR OTHER HEALTH PROFESSIONAL FROM ENGAGING IN FREE SPEECH ACTIVITIES OR DISCLOSING INFORMATION AS PRESCRIBED IN THIS ARTICLE.

4. MAKE, ADOPT OR ENFORCE ANY POLICY OR PRACTICE THAT DIRECTLY OR INDIRECTLY AUTHORIZES, SANCTIONS, PERMITS, EXCUSES OR ENCOURAGES ANY OTHER PERSON TO ENGAGE IN CONDUCT THAT IS LIKELY TO PROHIBIT, IMPEDE, DISCOURAGE, INTIMIDATE, COERCE OR INDUCE IN ANY MANNER A DIRECT CARE REGISTERED NURSE OR OTHER HEALTH PROFESSIONAL FROM ENGAGING IN FREE SPEECH ACTIVITIES OR DISCLOSING INFORMATION AS PROVIDED IN THIS ARTICLE.

B. A HOSPITAL OR OTHER HEALTH CARE INSTITUTION SHALL NOT USE TECHNOLOGY THAT:

1. LIMITS THE DIRECT CARE REGISTERED NURSE IN PERFORMING FUNCTIONS THAT ARE PART OF THE NURSING PROCESS, INCLUDING FULL EXERCISE OF INDEPENDENT

CLINICAL JUDGMENT IN ASSESSMENT, PLANNING, IMPLEMENTATION AND EVALUATION OF CARE, OR FROM ACTING AS PATIENT ADVOCATE IN THE EXCLUSIVE INTEREST OF THE PATIENT.

2. IS SKILL DEGRADING.

3. INTERFERES WITH THE DIRECT CARE REGISTERED NURSE WHO PROVIDES INDIVIDUALIZED PATIENT CARE.

4. OVERRIDES THE DIRECT CARE REGISTERED NURSE'S INDEPENDENT PROFESSIONAL JUDGMENT.

5. INTERFERES WITH THE DIRECT CARE REGISTERED NURSE'S RIGHT TO ADVOCATE IN THE EXCLUSIVE INTEREST OF THE PATIENT.

C. THE PROHIBITION TO INTERFERE WITH A DIRECT CARE REGISTERED NURSE'S RIGHTS AND DUTIES PRESCRIBED IN THIS ARTICLE APPLIES TO THE FOLLOWING:

1. A HOSPITAL OR OTHER HEALTH CARE INSTITUTION EMPLOYER.

2. ALL MANAGEMENT PERSONNEL EMPLOYED BY A HOSPITAL OR OTHER HEALTH CARE INSTITUTION.

3. ALL PERSONNEL WITH MANAGEMENT OR SUPERVISORY AUTHORITY EMPLOYED BY A HOSPITAL OR OTHER HEALTH CARE INSTITUTION, INCLUDING THE REGISTERED NURSE ADMINISTRATOR, REGISTERED NURSE MANAGER AND REGISTERED NURSE SUPERVISOR.

4. ALL MEDICAL PERSONNEL WHO TREAT PATIENTS ADMITTED TO HOSPITAL NURSING UNITS, WHETHER EMPLOYED BY THE HOSPITAL OR OTHER HEALTH CARE INSTITUTION.

5. ANY PERSON WHO IS PRIVILEGED TO ADMIT PATIENTS, THROUGH AN AFFILIATED MEDICAL GROUP OR OTHERWISE.

D. PROHIBITED INTERFERENCE WITH PATIENT ADVOCACY DUTIES OF A DIRECT CARE REGISTERED NURSE INCLUDES:

1. CONDUCT, ACTIONS OR OMISSIONS TO ACT THAT DIRECTLY OR INDIRECTLY ARE LIKELY TO PROHIBIT, IMPEDE, DISCOURAGE, INTIMIDATE, COERCE OR INDUCE IN ANY MANNER A DIRECT CARE REGISTERED NURSE FROM TAKING ACTION INDICATED OR AUTHORIZED BY THE PROFESSIONAL OBLIGATIONS OF PATIENT ADVOCACY DESCRIBED IN THIS ARTICLE.

2. ANY ACT OF PROHIBITED INTERFERENCE COMMITTED BY AN INDIVIDUAL WITHIN THE COURSE AND SCOPE OF EMPLOYMENT AS MANAGEMENT, NURSING SERVICE OR MEDICAL PERSONNEL FOR A HOSPITAL OR OTHER HEALTH CARE INSTITUTION.

E. ANY EMPLOYEE OF A HOSPITAL OR OTHER HEALTH CARE INSTITUTION EMPLOYER WHO HAS AUTHORITY TO TAKE, DIRECT OTHERS TO TAKE, RECOMMEND OR APPROVE ANY PERSONNEL ACTION OF THE EMPLOYER WITH RESPECT TO A DIRECT CARE REGISTERED NURSE OR OTHER HEALTH PROFESSIONAL, WITH RESPECT TO THAT AUTHORITY, SHALL NOT TAKE OR FAIL TO TAKE, OR THREATEN TO TAKE OR FAIL TO TAKE, ANY ACTION WITH RESPECT TO A DIRECT CARE REGISTERED NURSE OR OTHER HEALTH PROFESSIONAL BECAUSE THE NURSE OR OTHER HEALTH PROFESSIONAL ENGAGES IN CONDUCT IN FURTHERANCE OF THAT PERSON'S DUTIES AND RIGHTS AS PRESCRIBED IN THIS ARTICLE, INCLUDING REFUSING TO OBEY AN ORDER THAT THE DIRECT CARE REGISTERED NURSE HAS DETERMINED, IN THE EXERCISE OF THE NURSE'S INDEPENDENT PROFESSIONAL JUDGMENT, SHOULD BE REFUSED IN ACCORDANCE WITH THE NURSE'S DUTY AND RIGHT OF PATIENT ADVOCACY. ANY ACTION OR OMISSION TO ACT UNDERTAKEN IN

THE COURSE OR SCOPE OF EMPLOYMENT FOR A HOSPITAL OR OTHER HEALTH CARE INSTITUTION IS CONSIDERED AN ACTION OR OMISSION OF THE HOSPITAL OR OTHER HEALTH CARE INSTITUTION FOR PURPOSES OF THIS ARTICLE.

F. AN EMPLOYEE OF A HOSPITAL OR OTHER HEALTH CARE INSTITUTION EMPLOYER WHO HAS AUTHORITY TO TAKE, DIRECT OTHERS TO TAKE, RECOMMEND OR APPROVE ANY REPORT OF ANY INCIDENT, CONDUCT OR CIRCUMSTANCES THAT INVOLVE A DIRECT CARE REGISTERED NURSE WHO IS EMPLOYED BY THE HOSPITAL OR OTHER HEALTH CARE INSTITUTION TO ANY PROFESSIONAL LICENSING BOARD, DISCIPLINARY BODY OR INVESTIGATORY FUNCTION OR OFFICER FOR PURPOSES OF A COMPLAINT, INVESTIGATION OR IMPOSITION OF PROFESSIONAL DISCIPLINE OR OTHER ADVERSE ACTION AFFECTING THE DIRECT CARE REGISTERED NURSE OR OTHER HEALTH PROFESSIONAL'S ACTIVE LICENSE STATUS OR GOOD STANDING TO PRACTICE AS A DULY LICENSED REGISTERED NURSE OR OTHER HEALTH PROFESSIONAL IN THIS STATE, WITH RESPECT TO SUCH AUTHORITY, SHALL NOT TAKE OR FAIL TO TAKE, OR THREATEN TO TAKE OR FAIL TO TAKE, ANY ACTION WITH RESPECT TO THE DIRECT CARE REGISTERED NURSE OR OTHER HEALTH PROFESSIONAL BECAUSE THE DIRECT CARE REGISTERED NURSE OR OTHER HEALTH PROFESSIONAL ENGAGES IN CONDUCT IN FURTHERANCE OF THAT PERSON'S DUTIES AND RIGHTS AS PRESCRIBED IN THIS ARTICLE, INCLUDING WITHOUT LIMITATION REFUSING TO OBEY AN ORDER THAT THE DIRECT CARE REGISTERED NURSE DETERMINES, IN THE EXERCISE OF THE NURSE'S INDEPENDENT PROFESSIONAL JUDGMENT, SHOULD BE REFUSED IN ACCORDANCE WITH THE DIRECT CARE REGISTERED NURSE'S DUTY OF PATIENT ADVOCACY.

36-1326. Retaliation; discrimination; prohibition

A HOSPITAL OR OTHER HEALTH CARE INSTITUTION EMPLOYER SHALL NOT DISCRIMINATE OR RETALIATE IN ANY MANNER AGAINST ANY PATIENT, EMPLOYEE OR CONTRACT EMPLOYEE OF THE HOSPITAL OR OTHER HEALTH CARE INSTITUTION OR ANY OTHER PERSON BECAUSE THAT PERSON HAS:

1. PRESENTED A GRIEVANCE OR COMPLAINT.

2. INITIATED OR COOPERATED IN ANY INVESTIGATION OR PROCEEDING OF ANY GOVERNMENTAL ENTITY, REGULATORY AGENCY OR PRIVATE ACCREDITATION BODY.

3. MADE A CIVIL CLAIM OR DEMAND OR FILED AN ACTION RELATING TO THE CARE, SERVICES OR CONDITIONS OF THAT HOSPITAL OR OF ANY AFFILIATED OR RELATED FACILITIES.

36-1327. Enforcement by private action

A. A HOSPITAL OR OTHER HEALTH CARE INSTITUTION EMPLOYER THAT VIOLATES THIS ARTICLE IS LIABLE TO ANY AGGRIEVED EMPLOYEE FOR:

1. DAMAGES EQUAL TO THE AMOUNT OF ANY WAGES, SALARY, EMPLOYMENT BENEFITS OR OTHER COMPENSATION DENIED OR LOST TO THE EMPLOYEE BY REASON OF THE EMPLOYER'S VIOLATION OF THIS ARTICLE. IF WAGES, SALARY, EMPLOYMENT BENEFITS OR OTHER COMPENSATION HAVE NOT BEEN DENIED OR LOST TO THE EMPLOYEE, THE EMPLOYER IS LIABLE FOR ANY ACTUAL MONETARY LOSSES SUSTAINED BY THE EMPLOYEE AS A DIRECT RESULT OF THE VIOLATION.

2. INTEREST ON THE AMOUNT DESCRIBED IN PARAGRAPH 1, CALCULATED AT THE PREVAILING INTEREST RATE.

3. AN ADDITIONAL AMOUNT AS LIQUIDATED DAMAGES EQUAL TO THE SUM OF THE AMOUNT OF DAMAGES DESCRIBED IN PARAGRAPH 1 AND THE INTEREST PRESCRIBED IN PARAGRAPH 2.

4. EQUITABLE RELIEF AS MAY BE APPROPRIATE, INCLUDING EMPLOYMENT, REINSTATEMENT AND PROMOTION.

B. AN ACTION TO RECOVER THE DAMAGES OR EQUITABLE RELIEF PURSUANT TO THIS SECTION MAY BE BROUGHT AGAINST ANY HOSPITAL OR OTHER HEALTH CARE INSTITUTION EMPLOYER, INCLUDING A PUBLIC AGENCY, IN ANY COURT OF COMPETENT JURISDICTION BY ANY ONE OR MORE EMPLOYEES FOR AND IN BEHALF OF THE EMPLOYEES AND OTHER EMPLOYEES SIMILARLY SITUATED.

C. IN AN ACTION BROUGHT PURSUANT TO THIS SECTION THE COURT SHALL AWARD TO A PREVAILING PLAINTIFF REASONABLE ATTORNEY FEES, REASONABLE EXPERT WITNESS FEES AND OTHER COSTS OF THE ACTION.

D. THIS SECTION DOES NOT LIMIT THE RIGHTS AND REMEDIES AVAILABLE UNDER SECTION 23-1501 TO AN EMPLOYEE OF A HOSPITAL OR OTHER HEALTH CARE INSTITUTION.

36-1328. Remedial standards

A. ANY TYPE OF DISCRIMINATORY TREATMENT OF A PATIENT BY WHOM, OR ON WHOSE BEHALF, A GRIEVANCE OR COMPLAINT HAS BEEN SUBMITTED, DIRECTLY OR INDIRECTLY, TO ANY GOVERNMENTAL ENTITY, REGULATORY AGENCY OR PRIVATE ACCREDITATION BODY RECEIVED BY A HEALTH FACILITY ADMINISTRATOR WITHIN ONE HUNDRED EIGHTY DAYS AFTER THE FILING OF THE GRIEVANCE OR COMPLAINT SHALL RAISE A REBUTTABLE PRESUMPTION THAT THE ACTION WAS TAKEN BY THE HOSPITAL IN RETALIATION FOR THE FILING OF THE GRIEVANCE OR COMPLAINT.

B. ANY DISCRIMINATORY TREATMENT OF AN EMPLOYEE WHO HAS PRESENTED A GRIEVANCE OR COMPLAINT OR WHO HAS INITIATED OR PARTICIPATED OR COOPERATED IN ANY INVESTIGATION OR PROCEEDING OF ANY GOVERNMENTAL ENTITY OR PRIVATE ACCREDITATION BODY, IF THE HOSPITAL OR OTHER HEALTH CARE INSTITUTION EMPLOYER HAD KNOWLEDGE OF THE EMPLOYEE'S INITIATION, PARTICIPATION OR COOPERATION, ESTABLISHES A REBUTTABLE PRESUMPTION THAT THE DISCRIMINATORY ACTION WAS TAKEN BY THE HOSPITAL OR OTHER HEALTH CARE INSTITUTION EMPLOYER IN RETALIATION, IF THE DISCRIMINATORY ACTION OCCURS WITHIN ONE HUNDRED EIGHTY DAYS AFTER THE FILING OF THE GRIEVANCE OR COMPLAINT. FOR THE PURPOSES OF THIS SUBSECTION, "DISCRIMINATORY TREATMENT OF AN EMPLOYEE" INCLUDES DISCHARGE, DEMOTION, SUSPENSION AND ANY OTHER UNFAVORABLE CHANGES IN THE TERMS OR CONDITIONS OF EMPLOYMENT, OR THE THREAT OF ANY OF THESE ACTIONS.

C. AN EMPLOYEE WHO HAS BEEN DISCRIMINATED AGAINST IN EMPLOYMENT PURSUANT TO THIS SECTION IS ENTITLED TO REINSTATEMENT, TO REIMBURSEMENT FOR LOST WAGES AND WORK BENEFITS CAUSED BY THE ACTS OF THE EMPLOYER AND TO AN AWARD OF REASONABLE ATTORNEY FEES AND COSTS AS THE PREVAILING PARTY.

36-1329. Enforcement procedures

A. EXCEPT AS PROVIDED IN SUBSECTION B OF THIS SECTION, AN ACTION MAY BE BROUGHT PURSUANT TO THIS ARTICLE NOT LATER THAN TWO YEARS AFTER THE DATE OF THE LAST EVENT CONSTITUTING THE ALLEGED VIOLATION FOR WHICH THE ACTION IS BROUGHT.

B. IN THE CASE OF SUCH ACTION BROUGHT FOR A WILFUL VIOLATION OF THIS ARTICLE, AN ACTION MAY BE BROUGHT WITHIN THREE YEARS AFTER THE DATE OF THE LAST EVENT CONSTITUTING THE ALLEGED VIOLATION FOR WHICH THE ACTION IS BROUGHT.

C. HOSPITALS AND OTHER HEALTH CARE INSTITUTIONS SHALL POST IN A PROMINENT PLACE FOR REVIEW BY THE PUBLIC AND THEIR EMPLOYEES A COPY OF SECTIONS 36-1321, 36-1322, 36-1323 AND 36-1324. THE POSTING SHALL HAVE A TITLE ACROSS THE TOP IN AT LEAST THIRTY-FIVE POINT, BOLD TYPEFACE THAT STATES: "RIGHTS OF DIRECT CARE REGISTERED NURSES AS PATIENT ADVOCATES AND EMPLOYEES".

36-1330. Civil penalties

A. A HOSPITAL OR OTHER HEALTH CARE INSTITUTION EMPLOYER THAT VIOLATES OR INTERFERES WITH ANY OF THE RIGHTS OR PROTECTIONS PRESCRIBED IN THIS ARTICLE IS SUBJECT TO A CIVIL PENALTY OF NOT MORE THAN TWENTY-FIVE THOUSAND DOLLARS FOR EACH VIOLATION.

B. A HOSPITAL OR OTHER HEALTH CARE INSTITUTION MANAGEMENT, NURSING SERVICE OR MEDICAL PERSONNEL THAT VIOLATES OR INTERFERES WITH ANY OF THE RIGHTS OR PROTECTIONS PRESCRIBED IN THIS ARTICLE IS SUBJECT TO A CIVIL PENALTY OF NOT MORE THAN TWENTY-FIVE THOUSAND DOLLARS FOR EACH SUCH VIOLATION.

C. THE DIRECTOR OF THE DEPARTMENT OF HEALTH SERVICES SHALL ISSUE A NOTICE OF THE VIOLATION AND THE PENALTY PURSUANT TO TITLE 41, CHAPTER 6, ARTICLE 10. A PERSON MAY APPEAL THE PENALTY BY FILING A WRITTEN REQUEST FOR A HEARING WITHIN THIRTY DAYS AFTER RECEIVING THE NOTICE. THE DEPARTMENT SHALL CONDUCT THIS HEARING PURSUANT TO TITLE 41, CHAPTER 6, ARTICLE 10. THE DIRECTOR SHALL NOT ENFORCE THE PENALTY UNTIL THE HEARING IS CONCLUDED.

D. THE ATTORNEY GENERAL SHALL ENFORCE PENALTIES IMPOSED UNDER THIS SECTION IN THE JUSTICE COURT OR THE SUPERIOR COURT IN THE COUNTY IN WHICH THE VIOLATION OCCURRED.

E. PENALTIES IMPOSED UNDER THIS SECTION ARE IN ADDITION TO OTHER PENALTIES IMPOSED UNDER THIS CHAPTER. PENALTIES COLLECTED PURSUANT TO THIS SECTION SHALL BE DEPOSITED IN THE STATE GENERAL FUND.

36-1331. Access to records

THE DEPARTMENT OF HEALTH SERVICES MAY ACCESS BOOKS, RECORDS, ACCOUNTS AND ANY OTHER INFORMATION OF A HOSPITAL OR OTHER HEALTH CARE INSTITUTION REASONABLY NECESSARY TO CONDUCT AN INVESTIGATION PURSUANT TO THIS ARTICLE.

36-1332. Investigative authority

A. TO ENSURE COMPLIANCE WITH THIS ARTICLE, THE DIRECTOR HAS FULL INVESTIGATIVE AUTHORITY.

B. EACH HOSPITAL AND HEALTH CARE INSTITUTION MUST MAKE, KEEP AND PRESERVE RECORDS PERTAINING TO COMPLIANCE WITH THIS ARTICLE.

C. FOR THE PURPOSES OF ANY INVESTIGATION CONDUCTED PURSUANT TO THIS SECTION, THE DIRECTOR MAY ISSUE SUBPOENAS.

Sec. 3. Legislative findings; collective patient advocacy

A. The legislature finds that in order to ensure the free and responsible exercise of the direct care registered nurse's duty and right of patient advocacy, various forms of collegial cooperation and collective organization and action may be necessary and appropriate for effective assertion of patient interests in the face of the very substantial and powerful conflicting interests inherent in today's highly concentrated health care industry operating under an exclusive institutional mandate of surplus revenue generation and according to workplace policies and conditions that necessarily subvert professional standards of care and nursing practice. The legislature declares that organizing or participating in an independent hospital or facility-based professional practice committees, general and specialty registered nursing professional associations, or labor organizations seeking recognition for or engaging in collective bargaining representation, are all acts of collective patient advocacy that direct care registered nurses may properly take to better protect their professional practice standards and their patients' interests.

B. The legislature finds that engaging in acts of collective patient advocacy as described in this section constitutes an exercise of the direct care registered nurse's duty and right of patient advocacy.

C. This act confirms and creates statutory patient advocacy rights for direct care registered nurses as provided in title 36, chapter 11, article 2, Arizona Revised Statutes, as added by this act.

Sec. 4. Short title

Title 36, chapter 11, Arizona Revised Statutes, as added by this act, may be cited as the "Arizona Patient Protection Act".