By: Thompson of Harris H.B. No. 2880

A BILL TO BE ENTITLED

AN ACT

relating to the rights and duties of hospital patients and certain health care providers; providing civil penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 241, Health and Safety Code, is amended by adding Subchapter I to read as follows:

SUBCHAPTER I. HOSPITAL PATIENT PROTECTION ACT

PART 1. GENERAL PROVISIONS

Sec. 241.301. SHORT TITLE. This subchapter may be cited as the Hospital Patient Protection Act.

Sec. 241.302. APPLICABILITY TO CHAPTER. Unless specifically superseded by a provision of this subchapter, the definitions and provisions of Subchapters A through G apply to this subchapter.

Sec. 241.303. DEFINITIONS. In this subchapter:

(1) "Acuity-based patient classification system" or "acuity system" means an established measurement tool that:

(A) predicts registered nursing care requirements for individual patients based on the severity of patient illness, the need for specialized equipment and technology, the intensity of required nursing interventions, and the complexity of clinical nursing judgment required to design, implement, and evaluate the patient's nursing care plan consistent with professional standards, the ability for self-care, including

motor, sensory, and cognitive deficits, and the need for advocacy intervention;

(B) details the amount of nursing care needed and the additional number of direct care registered nurses and other licensed and unlicensed nursing staff the hospital must assign, based on the independent professional judgment of a direct care registered nurse, to meet each patient's needs at all times; and

(C) is stated in terms that can be readily used and understood by direct care nursing staff.

(2) "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.

(3) "Clinical judgment" means the application of a direct care registered nurse's knowledge, skill, expertise, and experience in making independent decisions about patient care.

(4) "Clinical supervision" means the assignment of patient care tasks to other licensed nursing staff or to unlicensed staff under the supervision of a direct care registered nurse.

(5) "Competence" means the ability of a direct care registered nurse to act and integrate the knowledge, skills, abilities, and independent professional judgment that form the basis for safe, therapeutic, and effective patient care.

(6) "Critical access hospital," as defined by 42 U.S.C. Section 1395x(mm), means a health facility designated under a Medicare rural hospital flexibility program established by this state.

(7) "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 illness requires continuous monitoring, evaluation, and specialized intervention, and to educate the patient or the patient's family or other representative about the patient's medical condition. The term includes an intensive care unit, a burn center, a coronary care unit, or an acute respiratory unit.

(8) "Direct care registered nurse" or "direct care professional nurse" means a registered nurse licensed by the Texas Board of Nursing to engage in professional nursing under Chapter 301, Occupations Code, who has documented clinical competence and has accepted a direct, hands-on patient care assignment to implement medical and nursing regimens and provide related clinical supervision of patient care while exercising independent professional judgment at all times in the best interest of the patient.

(9) "Health care facility" means any facility, place, or building that is organized, maintained, and operated for the diagnosis, care, prevention, and treatment of physical or mental human illness, including convalescence, rehabilitation, and antepartum and postpartum care, for one or more persons and to which a person is generally admitted for at least a 24-hour stay. The term includes general hospitals and special hospitals.

(10) "Hospital" has the meaning assigned by Section 241.003 and includes a critical access hospital and a long-term acute care hospital.

(11) "Hospital unit" or "clinical patient care area"

means an intensive care or critical care unit, burn unit, labor and delivery room, antepartum and postpartum unit, newborn nursery, post-anesthesia service area, emergency department, operating room, pediatric unit, step-down or intermediate care unit, specialty care unit, telemetry unit, general medical or surgical care unit, psychiatric unit, rehabilitation unit, or skilled nursing facility unit.

(12) "Long-term acute care hospital" means any hospital or health care facility that specializes in providing acute care to medically complex patients with an anticipated length of stay of more than 25 days. The term includes freestanding and hospital-within-hospital models of long-term acute care facilities.

(13) "Medical or surgical unit" means a unit established to safeguard and protect patients whose severity of illness requires continuous monitoring, assessment, and specialized intervention and to educate the patient or the patient's family or other representative about the patient's medical condition. The term may include units:

(A) in which patients require less than intensive care or step-down care and receive 24-hour inpatient general medical care, post-surgical care, or both inpatient general medical and post-surgical care; and

(B) with mixed patient populations of diverse diagnoses and diverse age groups excluding pediatric patients.

(14) "Nurse" has the meaning provided by Section 301.002, Occupations Code.

(15) "Patient assessment" means the direct care registered nurse's use of critical thinking in an intellectually disciplined process that includes actively and skillfully interpreting, applying, analyzing, synthesizing, and evaluating data obtained through the direct care registered nurse's direct observation and communication with others.

(16) "Professional judgment" means the intellectual, educated, informed, and experienced process that the direct care registered nurse exercises in forming an opinion and reaching a clinical decision, in the patient's best interest, based on analysis of data, information, and scientific evidence.

(17) "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 of which the patient is capable in the shortest possible time, compatible with the patient's physical, intellectual, and emotional or psychological capabilities and in accordance with planned goals and objectives.

(18) "Skilled nursing facility" means a functional clinical unit that provides:

(A) skilled nursing care and supportive care to patients whose primary need is for skilled nursing care on a long-term basis and who are admitted after at least a 48-hour period of continuous inpatient care; and

(B) medical, nursing, dietary, and pharmaceutical services and an activity program.

(19) "Specialty care unit" means a unit that:

(A) is established to safeguard and protect patients whose severity of illness requires continuous monitoring, assessment, and specialized intervention and to educate the patient or the patient's family or other representative about the patient's medical condition;

(B) provides comprehensive care for a specific condition or disease that is not available in medical or surgical units; and

(C) is not otherwise covered by the definitions in this section.

(20) "Step-down or intermediate intensive care unit" means a unit established to:

(A) safeguard and protect patients whose severity of illness requires continuous monitoring, assessment, and specialized intervention and to educate the patient or the patient's family or other representative about the patient's medical condition; and

(B) provide care to patients with moderate or potentially severe physiologic instability requiring technical support but not necessarily artificial life support.

(21) "Technical support" means the use of specialized equipment by a direct care registered nurse for invasive monitoring, telemetry, and mechanical ventilation for the immediate amelioration or remediation of severe pathology for those patients requiring less care than intensive care but more than medical or surgical care.

(22) "Telemetry unit" means a unit that:

(A) is established to safeguard and protect patients whose severity of illness requires continuous monitoring, assessment, and specialized intervention and to educate the patient or the patient's family or other representative about the patient's medical condition; and

(B) is designated for the electronic monitoring, recording, retrieval, and display of cardiac electrical signals.

PART 2. HOSPITAL NURSING PRACTICE STANDARDS

Sec. 241.351. COMPETENCY REQUIRED. (a) A hospital must document, for each direct care registered nurse employed by the hospital, that the nurse:

(1) understands the statutory duties and responsibilities of registered nurses prescribed by Chapter 301, Occupations Code, and the rules adopted under that chapter; and

(2) has been provided with and understands the standards required by this part that are specific to each hospital unit in the hospital.

(b) A hospital may not assign a direct care registered nurse to a nursing unit or clinical area until the hospital complies with Subsection (a) in relation to that nurse.

Sec. 241.352. GENERAL REQUIREMENTS RELATED TO STAFFING RATIOS. (a) Each hospital shall implement a nurse staffing policy that includes:

(1) the minimum staffing by direct care registered nurses as determined in accordance with the requirements prescribed by Sections 241.353, 241.354, 241.355, and 241.356;

(2) the clinical unit direct care registered

nurse-to-patient ratios prescribed by Section 241.357; and

(3) an acuity-based patient classification system to determine minimum staffing requirements for patient care tasks not requiring a direct care registered nurse.

(b) Except as provided by Section 241.359, the direct care registered nurse-to-patient ratios required by this part represent the maximum number of patients that a hospital may assign to one direct care registered nurse at any time.

Sec. 241.353. RESTRICTIONS ON AVERAGING AND MANDATORY OVERTIME; RELIEF DURING ROUTINE ABSENCES; LAYOFFS. (a) A hospital may not average the number of patients and the total number of direct care registered nurses assigned to patients in a clinical unit during any one shift or over any period for the purposes of meeting the requirements prescribed by this part.

(b) A hospital may not impose mandatory overtime requirements to meet the hospital unit direct care registered nurse-to-patient ratios required by this part.

(c) A hospital shall ensure that only a direct care registered nurse may relieve another direct care registered nurse during breaks, meals, and routine absences from a clinical unit.

(d) A hospital may not impose layoffs of licensed practical nurses, licensed psychiatric technicians, certified nursing assistants, or other ancillary support staff to meet the clinical unit direct care registered nurse-to-patient ratios required by this part.

Sec. 241.354. EMERGENCY CARE; NEWBORN INTENSIVE CARE. (a) Only direct care registered nurses may be assigned to triage or

critical trauma patients.

(b) The direct care registered nurse-to-patient ratio for critical care patients in an emergency department shall be one to two or fewer at all times.

(c) At least two direct care registered nurses must be physically present in an emergency department when a patient is present.

(d) Triage, radio, or specialty or flight registered nurses may not be counted in the calculation of direct care registered nurse-to-patient ratios.

(e) Triage registered nurses may not be assigned the responsibility for the base radio.

(f) Only a direct care registered nurse may be assigned to an intensive care newborn nursery service unit.

(g) The direct care nurse-to-patient ratio for newborns in intensive care newborn nursery service units shall be one to two or fewer at all times.

Sec. 241.355. LABOR AND DELIVERY; ANTEPARTUM AND POSTPARTUM CARE; NURSERIES. (a) The direct care nurse-to-patient ratio shall be:

(1) one to one for active labor patients and patients with medical or obstetrical complications during the initiation of epidural anesthesia and circulation for cesarean delivery;

(2) one to three or fewer for antepartum patients who are not in active labor;

(3) one to four or fewer for postpartum women or post-surgical gynecological patients;

(4) one to five for patients in a well-baby nursery;

(5) one to one for unstable newborns and newborns in the resuscitation period; and

(6) one to four or fewer for recently born infants.

(b) In the event of cesarean delivery, the total number of mothers plus infants assigned to a direct care registered nurse may not exceed four.

(c) In the event of multiple births, the total number of mothers plus infants assigned to a direct care registered nurse may not exceed six.

Sec. 241.356. CONSCIOUS SEDATION. The direct care registered nurse-to-patient ratio for patients receiving conscious sedation shall be one to one or fewer at all times.

Sec. 241.357. MINIMUM DIRECT CARE REGISTERED NURSE-TO-PATIENT RATIOS GENERALLY. A hospital's staffing policy shall provide that, at all times during each shift within a unit of the hospital, a direct care registered nurse is assigned to not more than the following number of patients per unit:

(1) one patient in trauma or emergency units;

(2) one patient in operating room units, with 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-occupied operating room;

(3) two patients in critical care units, including neonatal intensive care units, emergency critical care and intensive care units, labor and delivery units, coronary care units, acute respiratory care units, post-anesthesia units

regardless of the type of anesthesia received, burn units, and immediate postpartum patients;

(4) three patients in emergency room units, step-down or intermediate intensive care units, pediatric units, telemetry units, and combined labor, delivery, and postpartum units;

(5) four patients in medical-surgical units, antepartum units, intermediate care nursery units, psychiatric units, and pre-surgical and other specialty care units;

(6) five patients in rehabilitation units and skilled nursing units;

(7) six patients in well-baby nursery units; and

(8) three couplets in postpartum units.

Sec. 241.358. ADDITIONAL CONDITIONS AND RESTRICTIONS. (a) Identifying a unit or clinical patient care area by a name other than those used in this subchapter does not affect a requirement to staff at the direct care registered nurse-to-patient ratios established by this part.

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

(c) Video cameras, remote monitoring, or any form of electronic visualization of a patient may not be used as a substitute for direct observation and care provided by a direct care registered nurse as required by this subchapter.

(d) A hospital may not assign unlicensed personnel to

perform a task that requires the clinical assessment, judgment, and skill of a licensed registered nurse, including:

(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 and an evaluation of the patient's response to the care provided, including administration of medication, venipuncture or intravenous therapy, or parenteral or tube feedings;

(4) invasive procedures, including inserting nasogastric tubes, inserting catheters, or tracheal suctioning; and

(5) educating patients and their families concerning the patient's medical condition, including post-discharge care.

(e) A hospital may not assign unlicensed staff to perform a direct care registered nurse function under the clinical supervision of a direct care registered nurse.

Sec. 241.359. EXCEPTION IN EMERGENCY. The requirements established by this part do not apply during a declared state of emergency if a hospital is requested or expected to provide an exceptional level of emergency or other medical services.

Sec. 241.360. ACUITY-BASED PATIENT CLASSIFICATION SYSTEM. (a) In addition to the direct care registered nurse-to-patient ratio requirements established by this part, each hospital shall implement an acuity-based patient classification system to

determine the additional nursing staff necessary to meet patient care needs in each unit.

(b) In this section, "additional nursing staff" means licensed vocational nurses, licensed psychiatric technicians, and certified nursing assistants.

Sec. 241.361. TRANSPARENCY. (a) An acuity-based patient classification system adopted by a hospital under this part must:

(1) disclose the methodology used to predict nurse staffing;

(2) identify each factor, assumption, and value used in applying that methodology;

(3) explain the scientific and empirical basis for each assumption and value; and

(4) include a certification, executed by the chief nursing officer, that the disclosures made under this section are true and complete.

(b) The classification system required by Subsection (a) shall be submitted to the department by a hospital as a mandatory condition of hospital licensure.

(c) A hospital's acuity-based patient classification system shall be available for public inspection in its entirety in accordance with procedures established by appropriate administrative rules promulgated by the department consistent with the purposes of this subchapter.

Sec. 241.362. WRITTEN NURSE STAFFING PLAN. The chief nursing officer or the chief nursing officer's designee shall develop a written nurse staffing plan for each patient care unit in

the hospital. The plan must specify an adequate number of direct care registered nurses necessary in each unit to serve patient care needs. The plan may not specify a staffing level for direct care registered nurses that falls below the requirements prescribed by Sections 241.353, 241.354, 241.355, 241.356, and 241.357.

Sec. 241.363. NURSE STAFFING POLICY DEVELOPMENT COMMITTEE. (a) Except as provided by Subsection (c), the chief nursing officer of each hospital shall appoint a nurse staffing policy development committee to develop a nurse staffing policy for the hospital.

(b) The committee must consist of 10 members. Five of the members must be direct care registered nurses.

(c) Where direct care registered nurses are represented for collective bargaining purposes, the collective bargaining agent for the direct care registered nurses may appoint five members of the committee.

(d) This section may not be construed to permit conduct prohibited under the National Labor Relations Act (29 U.S.C. Section 151 et seq.) or the federal Labor Management Relations Act, 1947 (29 U.S.C. Section 141 et seq.).

Sec. 241.364. NURSE STAFFING POLICY. (a) The nurse staffing policy development committee shall develop a written nurse staffing policy.

(b) In developing the nurse staffing policy, the committee:

(1) shall give significant consideration to the nurse staffing plan developed under Section 241.362;

(2) may not specify a staffing level for direct care registered nurses that falls below the requirements prescribed by

Sections 241.353, 241.354, 241.355, 241.356, and 241.357; and

(3) must consider:

(A) the number and acuity level of patients as determined by the application of an acuity system on a shift-by-shift basis;

(B) the anticipated admissions, discharges, and transfers of patients during each shift that impact direct patient care;

(C) specialized experience required of direct care registered nurses assigned to a particular unit;

(D) staffing levels and services provided by other health care personnel in meeting patient care needs that are not performed by direct care registered nurses;

(E) the efficacy of technology available that affects the delivery of patient care;

(F) the level of familiarity with hospital practices, policies, and procedures by temporary agency direct care registered nurses used during a shift; and

(G) obstacles to efficiency in the delivery of patient care presented by the hospital's physical layout.

(c) The chief nursing officer of the hospital shall deliver the nurse staffing policy to the governing body of the hospital.

Sec. 241.365. ADOPTION, IMPLEMENTATION, AND ENFORCEMENT OF NURSE STAFFING POLICY. The governing body of a hospital shall adopt, implement, and enforce the nurse staffing policy developed under Section 241.364.

Sec. 241.366. ANNUAL REEVALUATION OF POLICY AND

ACUITY-BASED PATIENT CLASSIFICATION SYSTEM. (a) In January of each year, the governing body of a hospital shall evaluate:

(1) the reliability of the acuity-based patient classification system for validating staffing requirements to determine whether the system accurately measures individual patient care needs and accurately predicts nurse staffing requirements based exclusively on individual patient needs; and

(2) the validity of the patient classification system.

(b) The governing body of a hospital shall update its staffing plan and acuity system based on the annual evaluation described by Subsection (a). If the review reveals that adjustments are necessary to ensure accuracy in measuring patient care needs, those adjustments must be implemented not later than the 30th day after the date that determination is made.

Sec. 241.367. SUBMISSION OF POLICY AND REEVALUATION. The governing body of a hospital shall submit the nurse staffing policy adopted under Section 241.365 and the written results of the annual review of that policy under Section 241.366 to the department not later than January 31 of each year.

PART 3. UNIFORM ACUITY-BASED PATIENT CLASSIFICATION SYSTEM

Sec. 241.401. DEVELOPMENT OF STANDARDS FOR A UNIFORM ACUITY-BASED PATIENT CLASSIFICATION SYSTEM. (a) The department shall appoint a committee to develop models of standard acuity tools for patient classification for use by hospitals in this state. The standard acuity tools developed by the committee must provide a method for establishing nurse staffing requirements above the hospital unit or clinical patient care area direct care

registered nurse-to-patient ratios required by Sections 241.353, 241.354, 241.355, 241.356, and 241.357.

(b) The committee must consist of 20 members, at least 11 of which are licensed registered nurses employed as direct care registered nurses by a hospital. The remaining nine members must include at least three technical or scientific experts in the specialized fields involved in the design and development of acuity-based patient classification systems.

(c) A person who has any employment, commercial, proprietary, financial, or other personal interest in the development, marketing, or use by a hospital of any privately developed patient classification system or related methodology, technology, or component system may not serve on the development committee.

(d) A candidate for appointment to the development committee may not be confirmed as a member of the committee until the individual files a disclosure of interest statement with the department that provides all information determined by the department to be necessary to demonstrate the absence of actual or potential conflict of interest. The filing is public information.

Sec. 241.402. ADOPTION OF STANDARD ACUITY TOOL FOR UNIFORM PATIENT CLASSIFICATION. (a) The development committee shall provide a written report to the department that describes the various standard acuity tools for hospital patient classification developed by the committee. The report must include sufficient explanation and justification to allow for competent review by the department. The executive commissioner of the Health and Human

Services Commission by rule shall adopt a standard acuity tool for patient classification for use in hospitals in this state from the options included in the report described by this section.

(b) The department shall review the standard acuity tool for patient classification adopted under this section annually. If the review reveals that adjustments are necessary to assure accuracy in measuring patient care needs, the executive commissioner of the Health and Human Services Commission shall develop proposed rules implementing those adjustments not later than the 30th day after the date that determination is made.

Sec. 241.403. ADOPTION, IMPLEMENTATION, AND ENFORCEMENT OF STANDARD ACUITY TOOL FOR PATIENT CLASSIFICATION BY HOSPITALS. (a) Each hospital shall adopt, implement, and enforce the standard acuity tool adopted by the department under Section 241.402 and must provide staffing based on that tool.

(b) Additional direct care registered nurse staffing above the hospital unit or clinical patient care area direct care registered nurse-to-patient ratios described by Sections 241.353, 241.354, 241.355, 241.356, and 241.357 shall be assigned in a manner determined by the standard acuity tool.

SECTION 2. Section 161.0315, Health and Safety Code, is amended by adding Subsections (a-1) and (a-2) to read as follows:

(a-1) The authority granted by this section does not include authority to form, establish, sponsor, sanction, recognize, support, or assist any committee, whether formal or informal, perpetual or ad hoc, that purports to directly or indirectly perform any peer review or other evaluative function with respect

to the competent, safe, or lawful practice of direct care registered or professional nurses, or that undertakes any activity that is intended to serve or has the effect of serving as an evaluative function with respect to the licensure, employment, or professional practice of a direct care registered or professional nurse.

(a-2) A committee formed under this section may not undertake any activity that is intended to have or has the effect of serving as an evaluative function with respect to the licensure, employment, or professional practice of a direct care registered or professional nurse.

SECTION 3. Section 241.026, Health and Safety Code, is amended by amending Subsections (a) and (c) and adding Subsections (g) and (h) to read as follows:

(a) The board shall adopt and enforce rules to further the purposes of this chapter. The rules at a minimum shall address:

(1) minimum requirements for staffing by physicians [~~and nurses~~];

(2) hospital services relating to patient care;

(3) fire prevention, safety, and sanitation requirements in hospitals;

(4) patient care and a patient bill of rights;

(5) compliance with other state and federal laws affecting the health, safety, and rights of hospital patients; and

(6) implementation and enforcement of the minimum requirements and standards for nurse staffing and competent practice by nurses prescribed by this chapter, [~~compliance with~~

~~nursing peer review under~~] Subchapter I, Chapter 301, and Chapter 303, Occupations Code, and the rules of the Texas Board of Nursing [~~relating to peer review~~].

(c) Except as provided by Subsections (g) and (h), on [~~Upon~~] the recommendation of the hospital licensing director and the council, the board by order may waive or modify the requirement of a particular provision of this Act or minimum standard adopted by board rule under this section to a particular general or special hospital if the board determines that the waiver or modification will facilitate the creation or operation of the hospital and that the waiver or modification is in the best interests of the individuals served or to be served by the hospital.

(g) Except as provided by Subsection (h), the department may not grant a waiver of or exception to the requirements prescribed by Sections 241.353, 241.354, 241.355, 241.356, and 241.357. A waiver granted under Subsection (c) has no legal effect to the extent that the waiver directly or indirectly operates as a waiver of, exception to, or excuse for noncompliance with a requirement prescribed by Sections 241.353, 241.354, 241.355, 241.356, and 241.357.

(h) The department may grant a critical access hospital a waiver of the requirements prescribed by Sections 241.353, 241.354, 241.355, 241.356, and 241.357 for not more than one year to prepare for compliance with those provisions. After that date, requests for waivers of the requirements prescribed by Sections 241.353, 241.354, 241.355, 241.356, and 241.357 may not be granted except on the express written order of the executive commissioner of the

Health and Human Services Commission, issued after public notice and reasonable opportunity for public comment, based on express findings supported by a written record that the requested waiver does not jeopardize the health, safety, and well-being of patients affected and is needed for increased operational efficiency.

SECTION 4. Section 241.051(a), Health and Safety Code, is amended to read as follows:

(a) The department may make any inspection, survey, or investigation that it considers necessary. A representative of the department may enter the premises of a hospital at any [~~reasonable~~] time, with or without advance notice, to make an inspection, a survey, or an investigation to assure compliance with or prevent a violation of this chapter, the rules adopted under this chapter, an order or special order of the commissioner of health, a special license provision, a court order granting injunctive relief, or other enforcement procedures. The department shall maintain the confidentiality of hospital records as applicable under state or federal law.

SECTION 5. Section 241.052, Health and Safety Code, is amended to read as follows:

Sec. 241.052. COMPLIANCE WITH RULES AND STANDARDS. (a) A hospital that is in operation when an applicable rule or minimum standard is adopted under this chapter, on application to the department and for good cause shown, must be given a reasonable period within which to comply with the rule or standard.

(b) Except as provided by Subsection (c), the [~~The~~] period for compliance may not exceed six months, except that the

department may extend the period beyond six months if the hospital sufficiently shows the department that it requires additional time to complete compliance with the rule or standard.

(c) The department may not extend the period for compliance with the requirements prescribed by Sections 241.353, 241.354, 241.355, 241.356, and 241.357 beyond the six-month period allowed under Subsection (b).

SECTION 6. Sections 241.054(e) and (i), Health and Safety Code, are amended to read as follows:

(e) The district court shall assess the civil penalty authorized by Section 241.055 or 241.0551, grant injunctive relief, or both, as warranted by the facts. The injunctive relief may include any prohibitory or mandatory injunction warranted by the facts, including a temporary restraining order, temporary injunction, or permanent injunction.

(i) The injunctive relief and civil penalty authorized by this section and Section 241.055 or 241.0551 are in addition to any other civil, administrative, or criminal penalty provided by law.

SECTION 7. Section 241.055(b), Health and Safety Code, is amended to read as follows:

(b) Except as provided by Section 241.0551, a [~~A~~] hospital that violates Subsection (a), another provision of this chapter, or a rule adopted or enforced under this chapter is liable for a civil penalty of not more than $1,000 for each day of violation and for each act of violation. A hospital that violates this chapter or a rule or order adopted under this chapter relating to the provision of mental health, chemical dependency, or rehabilitation services

is liable for a civil penalty of not more than $25,000 for each day of violation and for each act of violation.

SECTION 8. Subchapter C, Chapter 241, Health and Safety Code, is amended by adding Section 241.0551 to read as follows:

Sec. 241.0551. REMEDIES FOR CERTAIN VIOLATIONS. (a) A hospital found to have violated or aided and abetted the violation of any provision of Subchapter I, or any provision of Section 161.0315, 241.026, 241.051, or 241.052 of this code or Section 301.352, 301.402, 301.413, or 301.452, Occupations Code, relating to nurses, shall be subject, in addition to any other penalties that may be prescribed by law, to a civil penalty of not more than $25,000 for each day of violation and an additional $10,000 per nursing unit shift until the violation is corrected.

(b) The civil penalties authorized by this section and Section 241.055 may be assessed by either the department in administrative proceedings under Section 241.059 or by the courts in a civil action brought by a person harmed by those violations as provided by Section 241.056.

(c) All amounts assessed and recovered under this section and Section 241.055 by the state in relation to nurse staffing shall be deposited to the credit of a special account in the general revenue fund that may be appropriated only to the department to compensate nurses, patients, or other persons who have been adversely affected or exposed to risk of harm or have participated in disclosing the conduct and assisting the investigation and prosecution of the complaint on which the civil penalties are assessed. The award of these civil penalties to patient victims and

their advocates constitutes equitable compensation, restitution, and reimbursement for unlawful conduct that adversely affected those claimants. The department shall order an allocation and distribution of the proceeds of civil penalties obtained under this section among the claimants, based on equitable principles. Amounts assessed and collected by a court shall be allocated as compensation in the same manner and for the same purpose.

(d) The court or department may award, order, or impose any other remedies or sanctions, or require corrective actions, as are considered necessary or appropriate to remedy the violations and prevent those violations in the future.

(e) The court or the department may order payment of costs and reasonable attorney's fees to a complaining party who prevails in a complaint proceeding.

(f) In determining the amount of a penalty assessed under this section, the court or department shall consider:

(1) the hospital's degree of culpability and history of previous offenses;

(2) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation;

(3) whether the health and safety of the public was threatened by the violation;

(4) any actual harm or injury caused or threatened by the violation, including exposure of licensed personnel to breaches of professional responsibility, license suspension or revocation, or malpractice liability;

(5) the effort and expense incurred by the person

presenting or providing essential information or assistance in presenting the claims;

(6) the amount necessary to deter future violations; and

(7) other matters as justice may require.

SECTION 9. Section 241.056, Health and Safety Code, is amended by amending Subsection (a) and by adding Subsections (d), (e), (f), and (g) to read as follows:

(a) A person who is harmed by a violation under Section 241.028 or 241.055 or Subchapter I, including any nurse, patient, or other person who is adversely affected or exposed to risk of harm or has suffered actual harm caused in whole or substantial part by the violation, may petition a district court for appropriate injunctive relief.

(d) A nurse whose rights and duties as a patient advocate are denied, obstructed, or interfered with, or who suffers retaliatory action or other harm as a result of a hospital's violation of any provision of Subchapter I, has a cause of action against any person who violates or aids and abets in that violation and may recover in a civil action under this section:

(1) the greater of:

(A) actual damages, including damages for mental anguish even if no other injury is shown; or

(B) $10,000;

(2) exemplary damages;

(3) court costs; and

(4) reasonable attorney's fees.

(e) In addition to any amount recovered under Subsection (d), a nurse whose employment is suspended or terminated in violation of law is entitled to:

(1) reinstatement to the employee's former position or severance pay in an amount equal to three months of the employee's most recent salary; and

(2) compensation for wages lost during the period of suspension or termination.

(f) A nurse who brings an action under this section alleging retaliation for acts or omissions taken by the nurse under a claim of professional authority and duty has the burden of proving that:

(1) the nurse had reasonable cause to suspect that:

(A) unless the nurse engaged in the act or omission at issue, a patient would be exposed to unsafe conditions and risk of harm or injury;

(B) failure of the nurse to act would not be in the interests of the affected patient;

(C) the hospital's acts or omissions would constitute grounds for reporting the hospital to the department under Subchapter I; or

(D) the chief nursing officer's acts or omissions would constitute grounds for reporting the chief nursing officer under Subchapter I of this chapter or Chapter 301, Occupations Code, or would violate a rule adopted by the Texas Board of Nursing; and

(2) the nurse's action was a substantial factor in a hospital's decision to take adverse personnel action against the

nurse.

(g) In an action brought under Subsection (d), there is a rebuttable presumption that any adverse personnel action taken against a nurse was for the nurse's exercise of protected rights and obligations if the adverse action was taken not later than the 60th day after the date of the action the nurse alleged as the subject of retaliation.

SECTION 10. Section 241.059(a), Health and Safety Code, is amended to read as follows:

(a) The commissioner of health may assess an administrative penalty against a hospital that violates this chapter, a rule adopted pursuant to this chapter, a special license provision, an order or emergency order issued by the commissioner or the commissioner's designee, or another enforcement procedure permitted under this chapter. The commissioner shall assess an administrative penalty against a hospital that violates Section 166.004. The penalties authorized by this section are cumulative and may not be assessed instead of or as any set-off or credit against penalties authorized by Section 241.055 or 241.0551.

SECTION 11. Section 241.055(d), Health and Safety Code, is repealed.

SECTION 12. The committee created under Section 241.401, Health and Safety Code, as added by this Act, shall submit its written report proposing standard acuity tools for patient classification for use by hospitals in this state to the Department of State Health Services not later than September 1, 2014.

SECTION 13. The executive commissioner of the Health and

Human Services Commission shall adopt the standard acuity tool required by Section 241.402, Health and Safety Code, as added by this Act, not later than January 1, 2015.

SECTION 14. This Act takes effect September 1, 2013.