

HOUSE BILL 178

54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019

INTRODUCED BY

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AN ACT

RELATING TO HEALTH CARE; ENACTING THE PATIENT SAFE STAFFING ACT; REQUIRING HOSPITALS TO ESTABLISH STAFFING LEVELS FOR HOSPITAL NURSING UNITS; GIVING A NURSE THE RIGHT TO REFUSE AN ASSIGNMENT UNDER CERTAIN CIRCUMSTANCES; REQUIRING HOSPITALS TO POST AND REPORT THEIR DAILY HOSPITAL NURSING UNIT PATIENT CENSUS AND STAFFING LEVELS; MAKING THE DEPARTMENT OF HEALTH RESPONSIBLE FOR POSTING HOSPITAL REPORTS ON THE DEPARTMENT OF HEALTH'S WEBSITE FOR CONSUMERS; AUTHORIZING THE DEPARTMENT OF HEALTH TO ENFORCE COMPLIANCE WITH THE PATIENT SAFE STAFFING ACT THROUGH PENALTIES AND CORRECTIVE ACTION; AUTHORIZING THE DEPARTMENT OF HEALTH TO PROMULGATE RULES TO IMPLEMENT THE PATIENT SAFE STAFFING ACT; PROVIDING WHISTLEBLOWER PROTECTION TO EMPLOYEES WHO FILE A GRIEVANCE OR COMPLAINT UNDER THE PATIENT SAFE STAFFING ACT.

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1 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

2 SECTION 1. [NEW MATERIAL] SHORT TITLE.--This act may be
3 cited as the "Patient Safe Staffing Act".

4 SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the
5 Patient Safe Staffing Act:

6 A. "committee" means a nursing staffing committee;

7 B. "critical-access hospital" means a hospital
8 that:

9 (1) has twenty-five or fewer acute care
10 inpatient beds;

11 (2) is located more than thirty-five miles
12 from another hospital;

13 (3) maintains an annual average length of stay
14 of ninety-six hours or less for acute care patients; and

15 (4) provides emergency care services twenty-
16 four hours a day, seven days a week;

17 C. "department" means the department of health;

18 D. "hospital" means any general or special hospital
19 licensed by the department, whether publicly or privately
20 owned;

21 E. "nurse" means a registered nurse or a licensed
22 practical nurse;

23 F. "patient abandonment" means a nurse's unilateral
24 severance of an established nurse-patient relationship without
25 giving reasonable notice in accordance with hospital policy so

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1 that arrangements can be made for continuation of nursing care
2 by others;

3 G. "patient census" means the actual number of
4 patients that occupy beds in a nursing unit and require nursing
5 care;

6 H. "scope of practice" means the parameters within
7 which nurses practice, based upon education, experience,
8 licensure, certification and expertise;

9 I. "unit" means a hospital nursing unit; and

10 J. "unlicensed assistive personnel" means a
11 certified nursing assistant, a technician, an aide, a unit
12 secretary, an orderly or any other unlicensed personnel who
13 assist in the provision of direct patient care.

14 SECTION 3. [NEW MATERIAL] COMMITTEE REQUIRED.--A hospital
15 shall have a committee, chaired by the director of nursing,
16 composed as follows:

17 A. sixty percent of the members shall be nurses who
18 provide direct patient care during at least fifty percent of
19 their work time but who are not hospital nurse managers or
20 hospital administrators, at least one of whom provides direct
21 care in a nurse specialty unit; and

22 B. the other members shall be other qualified
23 persons as determined by the hospital.

24 SECTION 4. [NEW MATERIAL] DUTIES OF COMMITTEE.--A
25 committee shall:

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1 A. develop a staffing plan for each of the
2 hospital's units;

3 B. select outcome indicators for each unit from
4 among the national database of nursing quality indicators,
5 hospital compare, patient satisfaction surveys and such other
6 appropriate standards as determined by the committee;

7 C. conduct an annual or more frequent review of the
8 staffing plan for each unit to update or modify the staffing
9 plan as determined by the committee; and

10 D. conduct an annual or more frequent review of
11 outcome indicators for each unit to update or modify the
12 outcome indicators as determined by the committee.

13 SECTION 5. [NEW MATERIAL] NURSING STAFFING PLAN
14 REQUIREMENTS.--Each unit's staffing plan shall:

15 A. specify the minimum number of nurses and
16 unlicensed assistive personnel required for each shift on the
17 unit based upon the level of intensity of care required by
18 patients and the variability in the number of admissions,
19 discharges and transfers under existing conditions;

20 B. take into account that critical access hospitals
21 are regulated by the department of health;

22 C. ensure that a nurse receives adequate
23 orientation before being assigned to a unit; and

24 D. specify circumstances, such as a declared state
25 of emergency, under which compliance with the staffing plan may

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1 be temporarily waived.

2 SECTION 6. [NEW MATERIAL] NURSING STAFFING LEVELS.--

3 A. Nursing staffing levels shall take into
4 consideration:

5 (1) recommendations from the hospital's chief
6 nursing officer, direct patient care nurses, unlicensed
7 assistive personnel, professional nursing organizations and
8 other appropriate resources as determined by the committee;

9 (2) the characteristics of patients in each
10 unit, including patient acuity as well as variability in the
11 number of discharges, admissions and transfers per shift;

12 (3) available medical and health information
13 technology and systems resources;

14 (4) the education, training and experience of
15 nurses who provide direct patient care for the purpose of
16 staffing a unit with an appropriate mix of more-experienced and
17 less-experienced nurses based on patients' needs;

18 (5) the ability to meet the needs of the
19 community being served; and

20 (6) such other appropriate factors as
21 determined by the committee.

22 B. Nursing staffing levels for each unit shall be
23 determined by majority vote of the committee.

24 C. A hospital shall formulate and adopt procedures
25 for flexibility in nursing staffing levels determined by the

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1 committee during surges and declines in patient census.

2 D. A hospital shall not achieve nursing staffing
3 levels with mandated overtime.

4 SECTION 7. [NEW MATERIAL] RIGHT TO REFUSE ASSIGNMENT.--

5 A. A nurse may refuse an assignment exclusively
6 under the following circumstances:

7 (1) the nurse lacks the requisite education,
8 training and experience to ensure patient safety; or

9 (2) the assignment is outside the nurse's
10 scope of practice.

11 B. Nothing in this section shall be construed to
12 equate a nurse's refusal of an assignment with patient
13 abandonment.

14 SECTION 8. [NEW MATERIAL] HOSPITAL POSTING AND REPORTING
15 OF NURSING STAFFING LEVELS.--

16 A. Within one hour of the start of each shift, a
17 hospital shall conspicuously post a daily report next to posted
18 patient rights in each of its units that contain the:

19 (1) actual patient census for each shift in
20 that unit;

21 (2) staffing level for each shift, according
22 to the staffing plan for such unit; and

23 (3) actual staffing level for each shift in
24 that unit.

25 B. The daily report shall include nurses and

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1 unlicensed assistive personnel working in the unit.

2 C. On a quarterly basis, a hospital shall
3 electronically submit to the department for public disclosure
4 on the department's website, on a date and in a format and form
5 prescribed by the department, an accurate report containing
6 the:

7 (1) information required in Subsection A of
8 this section for each day of the previous quarter; and

9 (2) number of daily admissions, discharges and
10 transfers for each shift of each unit.

11 SECTION 9. [NEW MATERIAL] DUTIES OF DEPARTMENT.--The
12 department shall:

13 A. prescribe the format, form and due date for a
14 hospital's quarterly submission of the report required of a
15 hospital pursuant to Subsection C of Section 8 of the Patient
16 Safe Staffing Act. The department shall require information
17 contained in each hospital's quarterly reports to be reported
18 in a uniform and clearly understandable format that permits
19 consumers of hospital services to make meaningful comparisons
20 of nursing staffing levels;

21 B. promptly publish each quarterly report required
22 of a hospital pursuant to Subsection C of Section 8 of the
23 Patient Safe Staffing Act on its internet website for public
24 inspection;

25 C. perform an audit if the information contained in

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1 a quarterly report required of a hospital pursuant to
2 Subsection C of Section 8 of the Patient Safe Staffing Act
3 gives rise to a reasonable suspicion that there is a
4 discrepancy in the report or that an inappropriate staffing
5 level has occurred;

6 D. enforce a hospital's compliance with the
7 provisions of the Patient Safe Staffing Act and with any
8 related rules promulgated by the department to implement the
9 provisions of that act through the imposition of penalties and
10 corrective action, which information shall also be published on
11 the department's website proximate to the quarterly reports
12 required pursuant to Subsection C of Section 8 of the Patient
13 Safe Staffing Act;

14 E. create a process pursuant to which:

15 (1) aggrieved persons may file complaints for
16 violations of the provisions of the Patient Safe Staffing Act;

17 (2) the department investigates the facts
18 alleged in these complaints; and

19 (3) the department issues a report and takes
20 appropriate action to ensure that a hospital is in compliance
21 with the provisions of the Patient Safe Staffing Act and
22 department rules and any related orders; and

23 F. promulgate such rules as are necessary to
24 implement and enforce the provisions of the Patient Safe
25 Staffing Act.

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1 SECTION 10. [NEW MATERIAL] WHISTLEBLOWER PROTECTION.--A
2 hospital shall not discriminate or retaliate in any manner
3 against an employee as a result of a grievance or complaint
4 initiated by the employee relating to:

- 5 A. a committee or plan;
- 6 B. the posting or reporting of, or the failure to
7 post or report, daily nursing staffing level information
8 required by the Patient Safe Staffing Act; and
- 9 C. the exercise of the right to refuse an
10 assignment pursuant to the Patient Safe Staffing Act.

11 SECTION 11. [NEW MATERIAL] ACTIONS FOR VIOLATIONS--
12 INJUNCTIVE RELIEF.--Whenever it appears that the department is
13 not enforcing the provisions of the Patient Safe Staffing Act
14 or any department rule promulgated pursuant to that act, the
15 attorney general or a party aggrieved or potentially aggrieved
16 by that violation may file suit in the district court of any
17 county for injunctive relief to enforce the provisions of the
18 Patient Safe Staffing Act or department rules.

19 SECTION 12. [NEW MATERIAL] NON-EXCLUSIVITY OF OTHER
20 RIGHTS AND REMEDIES.--The rights and remedies provided for in
21 the Patient Safe Staffing Act are not exclusive and shall be in
22 addition to any other rights or remedies provided for in any
23 other law or available under common law.