

SENATE JUDICIARY COMMITTEE SUBSTITUTE FOR
SENATE BILL 82

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

AN ACT

RELATING TO HEALTH CARE; ENACTING THE SAFE HARBOR FOR NURSES
ACT; ESTABLISHING SAFE HARBOR FOR REGISTERED NURSES AND
LICENSED PRACTICAL NURSES; REQUIRING EMPLOYERS TO OFFER SAFE
HARBOR TO NURSES WHO ARE REQUESTED TO ENGAGE IN PRACTICES THAT
NURSES BELIEVE TO BE IN VIOLATION OF THEIR LEGAL DUTIES;
REQUIRING EMPLOYERS TO DEVELOP A PROCESS FOR INVOKING SAFE
HARBOR; PREVENTING EMPLOYERS FROM DISCIPLINING NURSES FOR
INVOKING SAFE HARBOR.

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

SECTION 1. [NEW MATERIAL] SHORT TITLE.--This act may be
cited as the "Safe Harbor for Nurses Act".

SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the
Safe Harbor for Nurses Act:

A. "assignment" means the designated responsibility

1 for the provision or supervision of nursing care for a defined
2 work period in a defined work setting, including the specified
3 functions, duties, practitioner orders, supervisory directives
4 and amount of work designated as an individual nurse's
5 responsibility; provided that changes in a nurse's assignment
6 may occur at any time during the work period;

7 B. "good faith" means taking action supported by a
8 sincere belief with a reasonable factual or legal basis other
9 than the nurse's moral, religious or personal beliefs;

10 C. "health care facility" means an entity licensed
11 by the department of health that provides health care on its
12 premises and has three or more nurses;

13 D. "nurse" means a nurse licensed pursuant to the
14 Nursing Practice Act as a registered nurse or a licensed
15 practical nurse; and

16 E. "safe harbor" means a process that:

17 (1) protects a registered nurse or a licensed
18 practical nurse from adverse action by the health care facility
19 where the nurse is working when the nurse makes a good faith
20 request to be allowed to reject an assignment, which request is
21 based on the nurse's:

22 (a) assessment of the nurse's own
23 education, knowledge, competence or experience; and

24 (b) immediate assessment of the risk for
25 patient safety or potential violation of the Nursing Practice

1 Act or board of nursing rules; and

2 (2) provides for further assessment of the
3 situation.

4 SECTION 3. [NEW MATERIAL] SAFE HARBOR--HEALTH CARE
5 FACILITY RESPONSIBILITY.--

6 A. A nurse may invoke safe harbor when:

7 (1) in the nurse's good faith judgment, the
8 nurse lacks the basic knowledge, skills or abilities necessary
9 to deliver nursing care that is safe and that meets the minimum
10 standards of care to such an extent that accepting the
11 assignment would expose one or more patients to an
12 unjustifiable risk of harm or would constitute a violation of
13 the Nursing Practice Act or board of nursing rules; or

14 (2) the nurse questions the medical
15 reasonableness of another health care provider's order that the
16 nurse is required to execute.

17 B. A nurse who intends to invoke safe harbor shall
18 invoke it before the nurse engages in conduct or an assignment
19 giving rise to the nurse's request for safe harbor. A nurse
20 may also invoke safe harbor at any time during the work period,
21 when an initial assignment changes and, in the nurse's good
22 faith judgment, the change creates a situation that comports
23 with the requirements for invoking safe harbor pursuant to
24 Subsection A of this section. A health care facility shall
25 develop a process by which a nurse employed or contracted by

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1 that facility may invoke safe harbor.

2 C. A safe harbor process shall include:

3 (1) notification to all nurses on staff as to
4 how safe harbor may be invoked;

5 (2) notification by the nurse to the nurse's
6 supervisor that the nurse is invoking safe harbor;

7 (3) written documentation with the date, time
8 and location of the invocation of safe harbor and the reason
9 for invocation, signed by the supervisor and the nurse;

10 (4) a post-occurrence review of the situation
11 that:

12 (a) includes at least one other staff
13 nurse and nurse manager, as the health care facility defines
14 those roles; and

15 (b) is used to determine whether
16 additional action is required to minimize the likelihood of
17 similar situations in the future; and

18 (5) documentation of the resolution and review
19 of the matter in which safe harbor was invoked.

20 D. A health care facility shall not retaliate
21 against, demote, suspend, terminate, discipline, discriminate
22 against or report any action to the board of nursing when a
23 nurse makes a good faith request for safe harbor.