

HOUSE BILL 445

**51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013**

INTRODUCED BY

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AN ACT

RELATING TO HEALTH CARE; ENACTING THE SAFE STAFFING ACT;  
REQUIRING HOSPITALS TO ESTABLISH STAFFING LEVELS FOR HOSPITAL  
NURSING UNITS; GIVING A NURSE THE RIGHT TO REFUSE AN ASSIGNMENT  
THAT CONFLICTS WITH ESTABLISHED STAFFING LEVELS OR THAT IS NOT  
WITHIN THE NURSE'S SCOPE OF PRACTICE; 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'S  
WEB SITE FOR CONSUMERS; AUTHORIZING THE DEPARTMENT OF HEALTH TO  
ENFORCE COMPLIANCE WITH THE SAFE STAFFING ACT THROUGH PENALTIES  
AND CORRECTIVE ACTION; AUTHORIZING THE DEPARTMENT OF HEALTH TO  
PROMULGATE RULES TO IMPLEMENT THE SAFE STAFFING ACT; PROVIDING  
WHISTLEBLOWER PROTECTION TO EMPLOYEES WHO GRIEVE OR COMPLAIN  
UNDER THE SAFE STAFFING ACT.

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

2 SECTION 1. SHORT TITLE.--This act may be cited as the  
3 "Safe Staffing Act".

4 SECTION 2. DEFINITIONS.--As used in the Safe Staffing  
5 Act:

6 A. "ancillary staff" means a certified nurse  
7 assistant, a medication aide, an obstetric technician, a  
8 gastroenterology technician, an emergency room technician, an  
9 operating room technician, a behavioral health aide, a unit  
10 secretary, a nursing aide, an orderly and any other personnel  
11 who assist in the provision of nursing care;

12 B. "committee" means a nursing staffing committee;

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

14 D. "nurse" means a registered nurse and a licensed  
15 practical nurse; and

16 E. "unit" means a hospital nursing unit.

17 SECTION 3. COMMITTEE REQUIRED.--A hospital shall have a  
18 nursing staffing committee composed of eight members as  
19 follows:

20 A. six members who are direct care nurses who are  
21 not managers or administrators, and at least one of whom  
22 provides direct care in a nurse specialty unit;

23 B. a nurse manager; and

24 C. any other qualified person as determined by the  
25 hospital.

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1           **SECTION 4. DUTIES OF COMMITTEE.--**A committee shall:

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

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

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

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

14           **SECTION 5. NURSING STAFFING PLAN REQUIREMENTS.--**Each  
15 unit's staffing plan shall:

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

21          B. take into account conditions or circumstances  
22 specific to a rural, general or acute care hospital;

23          C. ensure that a nurse shall receive adequate  
24 orientation before being assigned to a unit; and

25          D. specify circumstances, such as a declared state

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1 of emergency, under which compliance with the staffing plan may  
2 be waived.

3 SECTION 6. NURSING STAFFING LEVELS.--

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

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

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

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

15 (4) the education, training and experience of  
16 nurses who provide direct patient care for the purpose of  
17 staffing a unit with an equal mix of more-experienced and less-  
18 experienced nurses; and

19 (5) such other appropriate factors as  
20 determined by the committee.

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

23 C. A hospital shall formulate and adopt an  
24 algorithm for maintaining nursing staffing levels determined by  
25 the committee, which may require the hiring of additional

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1 nurses.

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

4 SECTION 7. RIGHT TO REFUSE ASSIGNMENT.--A nurse may  
5 refuse an assignment if:

6 A. it violates the staffing plan for the unit; or

7 B. in the opinion of the nurse:

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

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

12 SECTION 8. HOSPITAL POSTING AND REPORTING OF NURSING  
13 STAFFING LEVELS.--

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

17 (1) the actual patient census for each shift  
18 in that unit;

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

21 (3) the actual staffing level for each shift  
22 in that unit.

23 B. The daily report shall include nurses and  
24 ancillary staff working in the unit.

25 C. On a quarterly basis, a hospital shall

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1 electronically submit to the department for public disclosure  
2 on the department's web site, on a date and in a format and  
3 form prescribed by the department, an accurate report  
4 containing:

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

7 (2) the number of daily admissions, discharges  
8 and transfers for each shift of each unit.

9 SECTION 9. DUTIES OF DEPARTMENT.--

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

18 B. The department shall promptly publish each  
19 quarterly report required of a hospital pursuant to Subsection  
20 C of Section 8 of the Safe Staffing Act on its internet web  
21 site for public inspection.

22 C. The department shall periodically audit the  
23 information contained in a quarterly report required of a  
24 hospital pursuant to Subsection C of Section 8 of the Safe  
25 Staffing Act.

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1           D. The department shall enforce a hospital's  
2 compliance with the provisions of the Safe Staffing Act and  
3 with any related rules promulgated by the department to  
4 implement the provisions of that act through the imposition of  
5 penalties and corrective action, which information shall also  
6 be published on the department's web site proximate to the  
7 quarterly reports required pursuant to Subsection C of Section  
8 8 of that act.

9           E. The department shall promulgate such rules as  
10 are necessary to implement and enforce the provisions of the  
11 Safe Staffing Act.

12           **SECTION 10. WHISTLEBLOWER PROTECTION.**--A hospital shall  
13 not discriminate or retaliate in any manner against an employee  
14 as a result of a grievance or complaint initiated by the  
15 employee relating to:

- 16           A. a committee or plan;
- 17           B. the posting or reporting of, or the failure to  
18 post or report, daily nursing staffing level information  
19 required by the Safe Staffing Act; and
- 20           C. the exercise of the right to refuse an  
21 assignment pursuant to the Safe Staffing Act.