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HOUSE BILL 83

51ST LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2014

INTRODUCED BY

Christine Trujillo

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 OF
HEALTH'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; MAKING AN APPROPRIATION.

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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 "Safe Staffing Act".

4 SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the
5 Safe Staffing 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. "hospital" means any general or special hospital
15 licensed by the department, whether publicly or privately
16 owned;

17 E. "nurse" means a registered nurse and a licensed
18 practical nurse; and

19 F. "unit" means a hospital nursing unit.

20 SECTION 3. [NEW MATERIAL] COMMITTEE REQUIRED.--A hospital
21 shall have a nursing staffing committee composed of eleven
22 members as follows:

23 A. seven nurses who provide direct patient care but
24 are not hospital nurse managers or hospital administrators, and
25 at least one of whom provides direct care in a nurse specialty

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1 unit; and

2 B. four other qualified persons as determined by
3 the hospital.

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

6 A. develop a staffing plan for each of the
7 hospital's units;

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

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

15 D. conduct an annual or more frequent review of
16 outcome indicators for each unit to update or modify the
17 outcome indicators as determined by the committee.

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

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

25 B. take into account conditions or circumstances

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1 specific to a rural, general or acute care hospital;

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

4 D. specify circumstances, such as a declared state
5 of emergency, under which compliance with the staffing plan may
6 be waived.

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

8 A. Nursing staffing levels shall take into
9 consideration:

10 (1) recommendations from the hospital's chief
11 nursing officer, direct patient care nurses, ancillary staff,
12 professional nursing organizations and other appropriate
13 resources as determined by the committee;

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

17 (3) available medical and health information
18 technology and systems resources;

19 (4) the education, training and experience of
20 nurses who provide direct patient care for the purpose of
21 staffing a unit with an equal mix of more-experienced and less-
22 experienced nurses; and

23 (5) such other appropriate factors as
24 determined by the committee.

25 B. Nursing staffing levels for each unit shall be

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1 determined by majority vote of the committee.

2 C. A hospital shall formulate and adopt an
3 algorithm for maintaining nursing staffing levels determined by
4 the committee, which may require the hiring of additional
5 nurses.

6 D. A hospital shall not achieve nursing staffing
7 levels with mandated overtime.

8 SECTION 7. [NEW MATERIAL] RIGHT TO REFUSE ASSIGNMENT.--A
9 nurse may refuse an assignment if:

10 A. the nurse lacks the requisite education,
11 training and experience to ensure patient safety; or

12 B. the assignment is outside the nurse's scope of
13 practice.

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 in each of its
18 units, next to posted patient rights, that contains 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 ancillary staff 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 web site, on a date and in a format and
5 form prescribed by the department, an accurate report
6 containing 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 Safe
16 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 Safe
23 Staffing Act on its internet web site for public inspection;

24 C. periodically audit the information contained in
25 a quarterly report required of a hospital pursuant to

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1 Subsection C of Section 8 of the Safe Staffing Act;

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

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

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

22 SECTION 11. APPROPRIATION.--

23 A. One hundred thousand dollars (\$100,000) is
24 appropriated from the general fund to the department of health
25 for expenditure in fiscal year 2015 to undertake the duties and

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1 activities described in Section 9 of the Safe Staffing Act, to
2 be allocated as follows:

3 (1) sixty-five thousand dollars (\$65,000) for
4 staffing; and

5 (2) thirty-five thousand dollars (\$35,000) for
6 expenses associated with the department's internet web site to
7 ensure that required hospital reports are posted and available
8 to consumers.

9 B. Any unexpended or unencumbered balance remaining
10 at the end of fiscal year 2015 shall revert to the general
11 fund.