

1 SENATE BILL 281

2 **53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017**

3 INTRODUCED BY

4 Linda M. Lopez

5  
6  
7  
8  
9  
10 AN ACT

11 RELATING TO HEALTH CARE; ENACTING THE PATIENT SAFE STAFFING  
12 ACT; REQUIRING HOSPITALS TO ESTABLISH STAFFING LEVELS FOR  
13 HOSPITAL NURSING UNITS; GIVING A NURSE THE RIGHT TO REFUSE AN  
14 ASSIGNMENT THAT CONFLICTS WITH ESTABLISHED STAFFING LEVELS OR  
15 THAT IS NOT WITHIN THE NURSE'S SCOPE OF PRACTICE; REQUIRING  
16 HOSPITALS TO POST AND REPORT THEIR DAILY HOSPITAL NURSING UNIT  
17 PATIENT CENSUS AND STAFFING LEVELS; MAKING THE DEPARTMENT OF  
18 HEALTH RESPONSIBLE FOR POSTING HOSPITAL REPORTS ON THE  
19 DEPARTMENT OF HEALTH'S WEBSITE FOR CONSUMERS; AUTHORIZING THE  
20 DEPARTMENT OF HEALTH TO ENFORCE COMPLIANCE WITH THE PATIENT  
21 SAFE STAFFING ACT THROUGH PENALTIES AND CORRECTIVE ACTION;  
22 AUTHORIZING THE DEPARTMENT OF HEALTH TO PROMULGATE RULES TO  
23 IMPLEMENT THE PATIENT SAFE STAFFING ACT; PROVIDING  
24 WHISTLEBLOWER PROTECTION TO EMPLOYEES WHO FILE A GRIEVANCE OR  
25 COMPLAINT UNDER THE PATIENT SAFE STAFFING ACT.

.205619.3

underscored material = new  
~~[bracketed material] = delete~~

underscored material = new  
[bracketed material] = delete

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

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 "Patient Safe Staffing Act".

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

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

B. "committee" means a nursing staffing committee;

C. "department" means the department of health;

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

E. "nurse" means a registered nurse or a licensed practical nurse; and

F. "unit" means a hospital nursing unit.

SECTION 3. [NEW MATERIAL] COMMITTEE REQUIRED.--A hospital shall have a committee composed as follows:

A. a simple majority of the members shall be nurses who provide direct patient care but are not hospital nurse managers or hospital administrators, at least one of whom

underscoring material = new  
[bracketed material] = delete

1 provides direct care in a nurse specialty unit; and

2 B. the other members shall be other qualified  
3 persons as determined by 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

.205619.3

underscored material = new  
[bracketed material] = delete

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

2 C. ensure that a nurse receives 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

.205619.3

underscoring material = new  
[bracketed material] = delete

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;

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

14 C. the assignment would require the nurse to  
15 abandon a patient. As used in this subsection, "abandon a  
16 patient" means a unilateral severance of an established nurse-  
17 patient relationship that occurs without prior reasonable  
18 notice to the patient or the patient's representative so that  
19 arrangements can be made for continuation of nursing care by  
20 another caregiver.

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

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

.205619.3

underscoring material = new  
~~[bracketed material] = delete~~

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

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

5 (3) actual staffing level for each shift in  
6 that unit.

7 B. The daily report shall include nurses and  
8 ancillary staff working in the unit.

9 C. On a quarterly basis, a hospital shall  
10 electronically submit to the department for public disclosure  
11 on the department's website, on a date and in a format and form  
12 prescribed by the department, an accurate report containing  
13 the:

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

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

18 SECTION 9. [NEW MATERIAL] DUTIES OF DEPARTMENT.--The  
19 department shall:

20 A. prescribe the format, form and due date for a  
21 hospital's quarterly submission of the report required of a  
22 hospital pursuant to Subsection C of Section 8 of the Patient  
23 Safe Staffing Act. The department shall require information  
24 contained in each hospital's quarterly reports to be reported  
25 in a uniform and clearly understandable format that permits

.205619.3

underscoring material = new  
~~[bracketed material] = delete~~

1 consumers of hospital services to make meaningful comparisons  
2 of nursing staffing levels;

3 B. promptly publish each quarterly report required  
4 of a hospital pursuant to Subsection C of Section 8 of the  
5 Patient Safe Staffing Act on its internet website for public  
6 inspection;

7 C. periodically audit the information contained in  
8 a quarterly report required of a hospital pursuant to  
9 Subsection C of Section 8 of the Patient Safe Staffing Act;

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

18 E. create a process pursuant to which:

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

21 (2) the department investigates the facts  
22 alleged in these complaints;

23 (3) the department issues a report and makes  
24 recommendations for the resolution of the matters that are the  
25 subject of the complaints; and

.205619.3

underscored material = new  
[bracketed material] = delete

1 (4) the department ensures compliance with the  
2 recommended actions for resolving the matters that are the  
3 subjects of the complaints; and

4 F. promulgate such rules as are necessary to  
5 implement and enforce the provisions of the Patient Safe  
6 Staffing Act.

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

11 A. a committee or plan;

12 B. the posting or reporting of, or the failure to  
13 post or report, daily nursing staffing level information  
14 required by the Patient Safe Staffing Act; and

15 C. the exercise of the right to refuse an  
16 assignment pursuant to the Patient Safe Staffing Act.

17 SECTION 11. [NEW MATERIAL] ACTIONS FOR VIOLATIONS--  
18 INJUNCTIVE RELIEF.--Whenever it appears that a person has  
19 violated, is violating or is threatening to violate any  
20 provision of the Patient Safe Staffing Act, the attorney  
21 general or a party aggrieved or potentially aggrieved by that  
22 violation may file in district court for injunctive relief to  
23 restrain the person from continuing the violation or threat of  
24 violation.