

2470--B

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I N   S E N A T E

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Introduced by Sens. MAZIARZ, ADAMS, ADDABBO, AVELLA, CARLUCCI, DILAN, GOLDEN, GRISANTI, JOHNSON, MONTGOMERY, PARKER -- read twice and ordered printed, and when printed to be committed to the Committee on Health -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- recommitted to the Committee on Health in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the public health law and the education law, in relation to a safe patient handling policy for health care facilities

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1     Section 1. This act shall be known and may be cited as the "safe  
2     patient handling act".  
3     S 2. Article 29-D of the public health law is amended by adding a new  
4     title 1-A to read as follows:  
5   TITLE 1-A  
6                                     SAFE PATIENT HANDLING POLICY  
7     SECTION 2997-G. LEGISLATIVE INTENT.  
8             2997-H. DEFINITIONS.  
9             2997-I. NEW YORK STATE SAFE PATIENT HANDLING TASK FORCE.  
10            2997-J. STATEWIDE SAFE PATIENT HANDLING POLICY.  
11            2997-K. HEALTH CARE FACILITY SAFE PATIENT HANDLING COMMITTEES.  
12            2997-L. ENFORCEMENT.  
13     S 2997-G. LEGISLATIVE INTENT. THE LEGISLATURE HEREBY FINDS AND  
14     DECLARES THAT IT IS IN THE PUBLIC INTEREST TO ENACT A STATEWIDE SAFE  
15     PATIENT HANDLING POLICY FOR HEALTH CARE FACILITIES IN NEW YORK STATE.  
16     WITHOUT SAFE PATIENT HANDLING LEGISLATION, IT IS PREDICTED THAT THE  
17     DEMAND FOR NURSING SERVICES WILL EXCEED THE SUPPLY BY NEARLY THIRTY  
18     PERCENT BY THE YEAR TWO THOUSAND TWENTY THUS DECREASING THE QUALITY OF  
19     HEALTH CARE IN NEW YORK STATE. THERE ARE MANY BENEFITS THAT CAN BE

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets  
[ ] is old law to be omitted.

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1 DERIVED FROM SAFE PATIENT HANDLING PROGRAMS. PATIENTS BENEFIT THROUGH  
2 IMPROVED QUALITY OF CARE AND QUALITY OF LIFE BY REDUCING THE RISK OF  
3 FALLS, BEING DROPPED, FRICTION BURNS, SKIN TEARS AND BRUISES. CAREGIVERS  
4 BENEFIT FROM THE REDUCED RISK OF CAREER ENDING AND DEBILITATING INJURIES  
5 LEADING TO INCREASED MORALE, IMPROVED JOB SATISFACTION AND LONGEVITY IN  
6 THE PROFESSION. HEALTH CARE FACILITIES REALIZE A QUICK RETURN ON THEIR  
7 INVESTMENT THROUGH REDUCED WORKERS' COMPENSATION MEDICAL AND INDEMNITY  
8 COSTS, REDUCED LOST WORKDAYS AND IMPROVED RECRUITMENT AND RETENTION OF  
9 CAREGIVERS. ALL OF THIS WILL LEAD TO FISCAL IMPROVEMENT IN HEALTH CARE  
10 IN NEW YORK STATE.

11 S 2997-H. DEFINITIONS. FOR THE PURPOSES OF THIS TITLE:

12 1. "HEALTH CARE FACILITY" SHALL MEAN ANY INDIVIDUAL, PARTNERSHIP,  
13 ASSOCIATION, CORPORATION, LIMITED LIABILITY COMPANY OR ANY PERSON OR  
14 GROUP OF PERSONS ACTING DIRECTLY OR INDIRECTLY ON BEHALF OF OR IN THE  
15 INTEREST OF THE EMPLOYER, WHICH PROVIDES HEALTH CARE SERVICES IN A  
16 FACILITY LICENSED OR OPERATED PURSUANT TO ARTICLE TWENTY-EIGHT, TWENTY-  
17 EIGHT-A OR THIRTY-SIX OF THIS CHAPTER, OR THE MENTAL HYGIENE LAW, THE  
18 EDUCATION LAW OR THE CORRECTION LAW, INCLUDING ANY FACILITY OPERATED BY  
19 THE STATE, A POLITICAL SUBDIVISION OR A PUBLIC BENEFIT CORPORATION AS  
20 DEFINED BY SECTION SIXTY-SIX OF THE GENERAL CONSTRUCTION LAW.

21 2. "NURSE" SHALL MEAN A REGISTERED PROFESSIONAL NURSE OR A LICENSED  
22 PRACTICAL NURSE AS DEFINED BY ARTICLE ONE HUNDRED THIRTY-NINE OF THE  
23 EDUCATION LAW.

24 3. "DIRECT CARE WORKER" SHALL MEAN ANY EMPLOYEE OF A HEALTH CARE  
25 FACILITY THAT IS RESPONSIBLE FOR PATIENT HANDLING OR PATIENT ASSESSMENT  
26 AS A REGULAR OR INCIDENTAL PART OF THEIR EMPLOYMENT, INCLUDING ANY  
27 LICENSED OR UNLICENSED HEALTH CARE WORKER.

28 4. "EMPLOYEE REPRESENTATIVE" SHALL MEAN THE RECOGNIZED OR CERTIFIED  
29 COLLECTIVE BARGAINING AGENT FOR NURSES OR DIRECT CARE WORKERS OF A  
30 HEALTH CARE FACILITY.

31 5. "SAFE PATIENT HANDLING" SHALL MEAN THE USE OF ENGINEERING CONTROLS,  
32 LIFTING AND TRANSFER AIDS, OR ASSISTIVE DEVICES, BY NURSES OR DIRECT  
33 CARE WORKERS, INSTEAD OF MANUAL LIFTING TO PERFORM THE ACTS OF LIFTING,  
34 TRANSFERRING AND REPOSITIONING OF HEALTH CARE PATIENTS AND RESIDENTS.

35 6. "SAFE PATIENT HANDLING PROGRAM" SHALL INCLUDE:

36 (A) A WRITTEN POLICY STATEMENT; AND

37 (B) MANAGEMENT COMMITMENT AND EMPLOYEE INVOLVEMENT; AND

38 (C) COMMITTEES; AND

39 (D) RISK ASSESSMENTS; AND

40 (E) INCIDENT INVESTIGATION; AND

41 (F) PROCUREMENT OF ENGINEERING CONTROLS, LIFTING AND TRANSFER AIDS OR  
42 ASSISTIVE DEVICES TO ENSURE SAFE PATIENT HANDLING; AND

43 (G) EMPLOYEE TRAINING AND EDUCATION ON SAFE PATIENT HANDLING; AND

44 (H) PROGRAM EVALUATION AND MODIFICATION.

45 S 2997-I. NEW YORK STATE SAFE PATIENT HANDLING TASK FORCE. 1. A NEW  
46 YORK STATE SAFE PATIENT HANDLING TASK FORCE IS HEREBY CREATED WITHIN THE  
47 DEPARTMENT. SUCH TASK FORCE SHALL CONSIST OF A TOTAL OF ELEVEN MEMBERS  
48 AND SHALL INCLUDE THE COMMISSIONER OR HIS OR HER DESIGNEE; THE COMMIS-  
49 SIONER OF LABOR OR HIS OR HER DESIGNEE; THREE MEMBERS APPOINTED BY THE  
50 GOVERNOR, TWO SUCH MEMBERS SHALL BE REPRESENTATIVES OF HEALTH CARE  
51 ORGANIZATIONS, ONE SUCH MEMBER SHALL BE FROM AN EMPLOYEE ORGANIZATION  
52 REPRESENTING NURSES AND ONE SUCH MEMBER SHALL BE FROM AN EMPLOYEE ORGAN-  
53 IZATION REPRESENTING DIRECT CARE WORKERS; TWO SUCH MEMBERS SHALL BE  
54 CERTIFIED ERGONOMIST EVALUATION SPECIALISTS; TWO MEMBERS TO BE APPOINTED  
55 BY THE TEMPORARY PRESIDENT OF THE SENATE, WHO SHALL HAVE EXPERTISE IN  
56 FIELDS OF DISCIPLINE RELATED TO HEALTH CARE OR OCCUPATIONAL SAFETY AND

1 ONE SUCH APPOINTEE SHALL BE FROM AN ORGANIZATION REPRESENTING EITHER A  
2 NURSE OR DIRECT CARE WORKER; TWO MEMBERS TO BE APPOINTED BY THE SPEAKER  
3 OF THE ASSEMBLY, WHO SHALL HAVE EXPERTISE IN FIELDS OF DISCIPLINE  
4 RELATED TO HEALTH CARE OR OCCUPATIONAL SAFETY AND ONE SUCH APPOINTEE  
5 SHALL BE FROM AN ORGANIZATION REPRESENTING EITHER A NURSE OR DIRECT CARE  
6 WORKER; ONE MEMBER TO BE APPOINTED BY THE MINORITY LEADER OF THE SENATE,  
7 WHO SHALL HAVE EXPERTISE IN FIELDS OF DISCIPLINE RELATED TO HEALTH CARE  
8 OR OCCUPATIONAL SAFETY; AND ONE MEMBER APPOINTED BY THE MINORITY LEADER  
9 OF THE ASSEMBLY, WHO SHALL HAVE EXPERTISE IN FIELDS OF DISCIPLINE  
10 RELATED TO HEALTH CARE OR OCCUPATIONAL SAFETY.

11 2. TASK FORCE MEMBERS SHALL RECEIVE NO COMPENSATION FOR THEIR  
12 SERVICES, BUT SHALL BE REIMBURSED FOR ACTUAL AND NECESSARY EXPENSES  
13 INCURRED IN THE PERFORMANCE OF THEIR DUTIES.

14 3. THE TASK FORCE SHALL BE APPOINTED NO LATER THAN JULY FIRST, TWO  
15 THOUSAND FOURTEEN AND SHALL SERVE FOR A PERIOD OF TWO YEARS; ANY VACAN-  
16 CIES ON THE TASK FORCE SHALL BE FILLED IN THE MANNER PROVIDED FOR IN THE  
17 INITIAL APPOINTMENT.

18 4. THE CHAIRPERSON OF THE TASK FORCE SHALL BE THE COMMISSIONER OR HIS  
19 OR HER DESIGNEE.

20 5. THE TASK FORCE SHALL MEET NO LESS THAN THREE TIMES A YEAR.

21 6. NOTWITHSTANDING ANY OTHER PROVISION OF LAW, A MAJORITY OF THE  
22 MEMBERS OF THE TASK FORCE THEN IN OFFICE SHALL CONSTITUTE A QUORUM FOR  
23 THE TRANSACTION OF BUSINESS OR THE EXERCISE OF POWER OR FUNCTION OF THE  
24 TASK FORCE. AN ACT, DETERMINATION OR DECISION OF THE MAJORITY OF THE  
25 MEMBERS OF THE TASK FORCE SHALL BE HELD TO BE THE ACT, DETERMINATION OR  
26 DECISION OF THE TASK FORCE.

27 7. THE TASK FORCE SHALL:

28 (A) PREPARE A POLICY STATEMENT REQUIRING A COMPREHENSIVE SAFE PATIENT  
29 HANDLING PROGRAM TO BE IMPLEMENTED AT ALL HEALTH CARE FACILITIES, AS  
30 DEFINED IN SUBDIVISION ONE OF SECTION TWENTY-NINE HUNDRED NINETY-SEVEN-H  
31 OF THIS TITLE. THE POLICY STATEMENT SHALL INCLUDE THE REQUIREMENTS FOR  
32 DEVELOPING AND IMPLEMENTING AN EFFECTIVE SAFE PATIENT HANDLING PROGRAM  
33 THAT SHALL INCLUDE ALL ELEMENTS SPECIFIED IN SUBDIVISION SIX OF SECTION  
34 TWENTY-NINE HUNDRED NINETY-SEVEN-H OF THIS TITLE;

35 (B) REVIEW EXISTING SAFE PATIENT HANDLING PROGRAMS OR POLICIES,  
36 INCLUDING DEMONSTRATION PROGRAMS PREVIOUSLY AUTHORIZED BY CHAPTER SEVEN  
37 HUNDRED THIRTY-EIGHT OF THE LAWS OF TWO THOUSAND FIVE;

38 (C) CONSULT WITH ANY ORGANIZATION, EDUCATIONAL INSTITUTION, OTHER  
39 GOVERNMENT ENTITY OR AGENCY OR PERSON;

40 (D) CONDUCT PUBLIC HEARINGS, AS IT DEEMS NECESSARY;

41 (E) IDENTIFY OR DEVELOP TRAINING MATERIALS AND PROCEDURES WITH REGARD  
42 TO THE EQUIPMENT OR TECHNOLOGY REQUIRED BY THE STATEWIDE POLICY;

43 (F) REVIEW RULES AND REGULATIONS PRIOR TO ADOPTION BY THE DEPARTMENT;

44 (G) REVIEW AND UPDATE THE POLICY STATEMENT ON A BI-ANNUAL BASIS; AND

45 (H) SUBMIT A REPORT TO THE COMMISSIONER BY JULY FIRST, TWO THOUSAND  
46 FIFTEEN IDENTIFYING SAFE PATIENT HANDLING PROGRAM ELEMENTS AND RECOMMEN-  
47 DATIONS OF SAFE PATIENT LIFTING EQUIPMENT, TECHNIQUES OR DEVICES.

48 8. ALL STATE DEPARTMENTS, COMMISSIONS, AGENCIES AND PUBLIC AUTHORITIES  
49 SHALL PROVIDE THE TASK FORCE WITH ANY REASONABLY REQUESTED ASSISTANCE OF  
50 ADVICE IN A TIMELY MANNER.

51 S 2997-J. STATEWIDE SAFE PATIENT HANDLING POLICY. 1. THE COMMISSIONER,  
52 IN CONSULTATION WITH THE TASK FORCE, SHALL PROMULGATE RULES AND REGU-  
53 LATIONS FOR A STATEWIDE SAFE PATIENT HANDLING POLICY FOR HEALTH CARE  
54 FACILITIES COVERED BY THIS TITLE. SUCH POLICY SHALL BE MADE AVAILABLE TO  
55 ALL FACILITIES COVERED BY THIS TITLE ON OR BEFORE JANUARY FIRST, TWO  
56 THOUSAND SIXTEEN.

2. THE STATEWIDE SAFE PATIENT HANDLING POLICY SHALL INCLUDE STANDARDS WITH REGARD TO:

(A) THE EQUIPMENT, DEVICES OR TECHNOLOGY TO BE USED BY A NURSE OR DIRECT CARE WORKER WHO IS ENGAGED IN PATIENT HANDLING;

(B) THE RATIO OF SUCH EQUIPMENT OR TECHNOLOGY BASED UPON THE TYPE OF FACILITY, THE NUMBER OF BEDS IN A FACILITY, THE NUMBER OF PATIENT-HANDLING TASKS, TYPES OF CARE UNITS, PATIENT POPULATIONS, AND PATIENT CARE AREAS;

(C) THE MINIMUM NUMBER OF DEVICES TO ENSURE THAT CURRENT ASSESSED HAZARDS ARE ELIMINATED OR MITIGATED;

(D) ESTABLISHING PROCEDURES FOR THE SUBMISSION AND REPORTING OF COMPLIANCE BY EACH HEALTH CARE FACILITY COVERED BY THIS TITLE; AND

(E) ESTABLISHING PROCEDURES FOR COMPLAINTS OR VIOLATIONS, INCLUDING THE FILING PROCESS, REVIEW, AND EVALUATION AND CORRECTIVE ACTION OF SUCH COMPLAINTS.

3. EACH HEALTH CARE FACILITY SHALL FILE WITH THE DEPARTMENT BY JULY FIRST, TWO THOUSAND SIXTEEN A DETAILED PLAN TO COMPLY WITH THE RULES AND REGULATIONS OF THE STATEWIDE SAFE PATIENT HANDLING POLICY. THE DEPARTMENT SHALL ACCEPT SUCH PLAN BY JULY FIRST, TWO THOUSAND SEVENTEEN.

S 2997-K. HEALTH CARE FACILITY SAFE PATIENT HANDLING COMMITTEES. 1. EACH HEALTH CARE FACILITY SHALL ESTABLISH A SAFE PATIENT HANDLING COMMITTEE EITHER BY CREATING A NEW COMMITTEE OR ASSIGNING THE POWERS AND DUTIES TO AN EXISTING COMMITTEE. AT LEAST ONE-HALF OF THE MEMBERS OF THE SAFE PATIENT HANDLING COMMITTEE SHALL BE FRONTLINE NON-MANAGERIAL NURSES OR DIRECT CARE WORKERS. AT LEAST ONE NON-MANAGERIAL NURSE AND ONE NON-MANAGERIAL DIRECT CARE WORKER SHALL BE ON THE SAFE PATIENT HANDLING COMMITTEE. THE COMMITTEE SHALL HAVE TWO CO-CHAIRS WITH ONE FROM MANAGEMENT AND ONE FRONTLINE NON-MANAGERIAL NURSE OR DIRECT CARE WORKER.

2. THE SAFE PATIENT HANDLING COMMITTEE SHALL: (A) SET CRITERIA FOR EVALUATION OF PATIENTS AND/OR RESIDENTS TO DETERMINE WHICH LIFT AND/OR REPOSITIONING EQUIPMENT, DEVICES OR TECHNOLOGY ARE TO BE USED; AND FOR PERFORMANCE OF RISK ASSESSMENTS OF THE ENVIRONMENT, JOB TASKS AND PATIENT NEEDS;

(B) ENSURE LIFT AND/OR REPOSITIONING EQUIPMENT IS SET UP, USED AND MAINTAINED ACCORDING TO MANUFACTURER'S INSTRUCTIONS;

(C) PROVIDE INITIAL AND ON-GOING YEARLY TRAINING AND EDUCATION ON SAFE PATIENT HANDLING FOR CURRENT EMPLOYEES AND NEW HIRES, AND ENSURE THAT RETRAINING FOR THOSE FOUND TO BE DEFICIENT IS PROVIDED AS NEEDED WITHOUT IMPACT TO THE EMPLOYMENT STATUS OF THE RETRAINED EMPLOYEES;

(D) SET UP AND UTILIZE A PROCESS FOR INCIDENT INVESTIGATION AND POST-INVESTIGATION REVIEW WHICH INCLUDES A PLAN OF CORRECTION AND IMPLEMENTATION OF CONTROLS;

(E) MAKE RECOMMENDATIONS FOR THE ACQUISITION OF EQUIPMENT OR PROCEDURES BEYOND THE MINIMUM STATE RECOMMENDATIONS; AND

(F) PERFORM, AT MINIMUM, AN ANNUAL PROGRAM ASSESSMENT AND EVALUATION.

S 2997-L. ENFORCEMENT. 1. ANY NURSE OR DIRECT CARE WORKER OR EMPLOYEE REPRESENTATIVE WHO BELIEVES THE HEALTH CARE FACILITY HAS NOT MET THE STANDARDS SET FORTH IN THIS TITLE SHALL BRING THE MATTER TO THE ATTENTION OF THE HEALTH CARE FACILITY IN THE FORM OF A WRITTEN NOTICE AND SHALL AFFORD THE HEALTH CARE FACILITY A REASONABLE OPPORTUNITY TO CORRECT SUCH DEFICIENCIES, PROVIDED THAT SUCH NOTICE NEED NOT BE PROVIDED WHERE THE NURSE OR DIRECT WORKER OR EMPLOYEE REPRESENTATIVE REASONABLY BELIEVES THAT THE FAILURE TO MEET STANDARDS PRESENTS AN IMMEDIATE THREAT TO THE SAFETY OF A SPECIFIC NURSE OR DIRECT CARE WORKER, OR TO THE GENERAL HEALTH OF A SPECIFIC PATIENT, AND REPORTING WILL NOT RESULT IN CORRECTIVE ACTION.

1 2. IN THE EVENT THAT THE HEALTH CARE FACILITY RECEIVING NOTICE PURSU-  
2 ANT TO SUBDIVISION ONE OF THIS SECTION DOES NOT TAKE CORRECTIVE ACTION  
3 WITHIN SIXTY DAYS, OR IN THE EVENT THAT NOTICE OF A FAILURE TO MEET  
4 STANDARDS IS NOT REQUIRED PURSUANT TO SUBDIVISION ONE OF THIS SECTION, A  
5 NURSE OR DIRECT CARE WORKER SHALL HAVE THE RIGHT TO REFUSE TO ENGAGE IN  
6 PATIENT HANDLING UNTIL THE HEALTH CARE FACILITY HAS ADEQUATELY ADDRESSED  
7 THE SPECIFIC FAILURE TO MEET STANDARDS. UPON REFUSAL, SUCH NURSE OR  
8 DIRECT CARE WORKER OR HIS OR HER REPRESENTATIVE SHALL FILE A COMPLAINT  
9 TO THE DEPARTMENT IN THE MANNER SET FORTH IN THE STATEWIDE SAFE PATIENT  
10 HANDLING POLICY.

11 3. NO EMPLOYER SHALL TAKE RETALIATORY ACTION AGAINST ANY NURSE OR  
12 DIRECT CARE WORKER FOR RAISING CONCERNS OR ISSUES REGARDING SAFE PATIENT  
13 HANDLING, FILING A COMPLAINT OR REFUSING TO ENGAGE IN PATIENT HANDLING.

14 4. NURSES AND DIRECT CARE WORKERS, AS DEFINED IN SECTION TWENTY-NINE  
15 HUNDRED NINETY-SEVEN-H OF THIS TITLE SHALL BE CONSIDERED EMPLOYEES FOR  
16 THE PURPOSES OF SECTION SEVEN HUNDRED FORTY-ONE OF THE LABOR LAW.

17 5. THE DEPARTMENT AND THE DEPARTMENT OF LABOR SHALL PUBLISH AND MAKE  
18 PUBLIC WHICH HEALTH CARE FACILITIES ARE IN COMPLIANCE WITH THE STATEWIDE  
19 SAFE PATIENT HANDLING POLICY.

20 S 3. The education law is amended by adding a new section 6510-f to  
21 read as follows:

22 S 6510-F. STATE SAFE PATIENT HANDLING POLICY. 1. THE REFUSAL OF A  
23 LICENSED PRACTICAL NURSE OR A REGISTERED NURSE TO ENGAGE IN PATIENT  
24 HANDLING SHALL NOT CONSTITUTE PATIENT ABANDONMENT OR NEGLECT IF SUCH  
25 NURSE HAS, IN A MANNER CONSISTENT WITH ARTICLE TWENTY-NINE-D OF THE  
26 PUBLIC HEALTH LAW AND THE RULES AND REGULATIONS PROMULGATED PURSUANT TO  
27 SUCH ARTICLE, REFUSED A PATIENT HANDLING ASSIGNMENT AND FILED A  
28 COMPLAINT WITH THE DEPARTMENT OF HEALTH.

29 2. THE REFUSAL OF A LICENSED OR UNLICENSED HEALTH CARE WORKER TO  
30 ENGAGE IN PATIENT HANDLING NOT CONSISTENT WITH THE STATE SAFE PATIENT  
31 HANDLING POLICY OR A FACILITY'S SAFE PATIENT HANDLING POLICY SHALL NOT  
32 BE CONSIDERED PROFESSIONAL MISCONDUCT. THE REFUSAL OF A LICENSED OR  
33 UNLICENSED HEALTH CARE WORKER TO ENGAGE IN PATIENT HANDLING SHALL NOT  
34 CONSTITUTE PATIENT ABANDONMENT OR NEGLECT IF SUCH WORKER HAS, IN A  
35 MANNER CONSISTENT WITH ARTICLE TWENTY-NINE-D OF THE PUBLIC HEALTH LAW  
36 AND THE RULES AND REGULATIONS PROMULGATED PURSUANT TO SUCH ARTICLE,  
37 REFUSED A PATIENT HANDLING ASSIGNMENT AND FILED A COMPLAINT WITH THE  
38 DEPARTMENT OF HEALTH.

39 S 4. This act shall take effect on the one hundred twentieth day after  
40 it shall have become a law.