

1 COSTS, REDUCED LOST WORKDAYS AND IMPROVED RECRUITMENT AND RETENTION OF
2 CAREGIVERS. ALL OF THIS WILL LEAD TO FISCAL IMPROVEMENT IN HEALTH CARE
3 IN NEW YORK STATE.

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

5 1. "HEALTH CARE FACILITY" SHALL MEAN ANY INDIVIDUAL, PARTNERSHIP,
6 ASSOCIATION, CORPORATION, LIMITED LIABILITY COMPANY OR ANY PERSON OR
7 GROUP OF PERSONS ACTING DIRECTLY OR INDIRECTLY ON BEHALF OF OR IN THE
8 INTEREST OF AN EMPLOYER THAT PROVIDES HEALTH CARE SERVICES IN A FACILITY
9 LICENSED OR OPERATED PURSUANT TO ARTICLE TWENTY-EIGHT, TWENTY-EIGHT-A OF
10 THIS CHAPTER, OR THE MENTAL HYGIENE LAW, ARTICLE EIGHT OR TITLE EIGHT OF
11 THE EDUCATION LAW, ARTICLE NINETEEN-G OF THE EXECUTIVE LAW OR THE
12 CORRECTION LAW, INCLUDING ANY FACILITY OPERATED BY THE STATE OR A PUBLIC
13 BENEFIT CORPORATION AS DEFINED BY SECTION SIXTY-SIX OF THE GENERAL
14 CONSTRUCTION LAW; PROVIDED THAT THE PROVISIONS OF THIS TITLE SHALL NOT
15 APPLY TO ANY FACILITY OPERATED OR FUNDED BY ANY MUNICIPAL CORPORATION,
16 AS DEFINED IN SECTION TWO OF THE GENERAL MUNICIPAL LAW, EXCEPT THAT
17 SUCH PROVISIONS SHALL APPLY TO FACILITIES LICENSED OR OPERATED BY ANY
18 POLITICAL SUBDIVISION OF THE STATE PURSUANT TO ARTICLE TWENTY-EIGHT OR
19 TWENTY-EIGHT-A OF THIS CHAPTER.

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

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

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

30 5. "SAFE PATIENT HANDLING" SHALL MEAN THE USE OF ENGINEERING CONTROLS,
31 LIFTING AND TRANSFER AIDS, OR ASSISTIVE DEVICES, BY NURSES OR DIRECT
32 CARE WORKERS TRANSFERRING AND REPOSITIONING OF HEALTH CARE PATIENTS AND
33 RESIDENTS IN HEALTH CARE FACILITIES.

34 6. (A) "FACILITY SAFE PATIENT HANDLING POLICY" SHALL INCLUDE:

35 (I) A WRITTEN POLICY STATEMENT; AND

36 (II) MANAGEMENT COMMITMENT AND EMPLOYEE INVOLVEMENT; AND

37 (III) COMMITTEES; AND

38 (IV) A FACILITY SAFE PATIENT HANDLING PROGRAM.

39 (B) "FACILITY SAFE PATIENT HANDLING PROGRAM" SHALL INCLUDE:

40 (I) RISK ASSESSMENTS; AND

41 (II) INCIDENT INVESTIGATION; AND

42 (III) RECOMMENDATIONS REGARDING PROCUREMENT OF ENGINEERING CONTROLS,
43 LIFTING AND TRANSFER AIDS OR ASSISTIVE DEVICES TO ENSURE SAFE PATIENT
44 HANDLING; AND

45 (IV) EMPLOYEE TRAINING AND EDUCATION ON SAFE PATIENT HANDLING; AND

46 (V) PROGRAM EVALUATION AND MODIFICATION.

47 S 2997-I. STATEWIDE SAFE PATIENT HANDLING WORK GROUP. 1. A STATEWIDE
48 SAFE PATIENT HANDLING WORK GROUP IS HEREBY CREATED WITHIN THE DEPART-
49 MENT. SUCH WORK GROUP SHALL CONSIST OF, AT MINIMUM, THE COMMISSIONER OR
50 HIS OR HER DESIGNEE; THE COMMISSIONER OF LABOR OR HIS OR HER DESIGNEE;
51 REPRESENTATIVES OF HEALTH CARE ORGANIZATIONS, REPRESENTATIVES FROM
52 EMPLOYEE ORGANIZATIONS REPRESENTING NURSES AND REPRESENTATIVES FROM
53 EMPLOYEE ORGANIZATIONS REPRESENTING DIRECT CARE WORKERS; REPRESENTATIVES
54 WHO ARE CERTIFIED ERGONOMIST EVALUATION SPECIALISTS AND REPRESENTATIVES
55 WHO HAVE EXPERIENCE IN OCCUPATIONAL HEALTH AND SAFETY.

1 2. WORK GROUP MEMBERS SHALL RECEIVE NO COMPENSATION FOR THEIR
2 SERVICES, BUT SHALL BE REIMBURSED FOR ACTUAL AND NECESSARY EXPENSES
3 INCURRED IN THE PERFORMANCE OF THEIR DUTIES.

4 3. THE WORK GROUP SHALL BE ESTABLISHED NO LATER THAN JANUARY FIRST,
5 TWO THOUSAND THIRTEEN.

6 4. THE WORK GROUP SHALL:

7 (A) PREPARE A STATEWIDE POLICY STATEMENT OUTLINING THE REQUIREMENT OF
8 A COMPREHENSIVE SAFE PATIENT HANDLING PROGRAM TO BE IMPLEMENTED AT ALL
9 HEALTH CARE FACILITIES, AS DEFINED IN SUBDIVISION ONE OF SECTION TWEN-
10 TY-NINE HUNDRED NINETY-SEVEN-H OF THIS TITLE. THE POLICY STATEMENT
11 SHALL OUTLINE THE REQUIREMENTS FOR DEVELOPING AND IMPLEMENTING A SAFE
12 PATIENT HANDLING PROGRAM THAT MUST INCLUDE ALL ELEMENTS SPECIFIED IN
13 SUBDIVISION SIX OF SECTION TWENTY-NINE HUNDRED NINETY-SEVEN-H OF THIS
14 TITLE;

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

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

20 (D) IDENTIFY OR DEVELOP TRAINING MATERIALS AND PROCEDURES WITH REGARD
21 TO THE EQUIPMENT OR TECHNOLOGY RECOMMENDED BY THE STATEWIDE POLICY;

22 (E) REVIEW RULES AND REGULATIONS PRIOR TO ADOPTION BY THE DEPARTMENT;

23 (F) REVIEW AND UPDATE THE POLICY STATEMENT ON A BI-ANNUAL BASIS;

24 (G) SERVE AS A RESOURCE FOR THE HEALTH CARE FACILITIES' SAFE PATIENT
25 HANDLING COMMITTEES, PURSUANT TO SUBDIVISION THREE OF SECTION
26 TWENTY-NINE HUNDRED NINETY-SEVEN-K OF THIS TITLE;

27 (H) ENGAGE IN CONSULTATION AND MAKE RECOMMENDATIONS RELATED TO THE
28 FEASIBILITY OF ESTABLISHING A STATEWIDE SAFE PATIENT HANDLING POLICY
29 APPLICABLE TO HEALTH CARE FACILITIES LICENSED OR OPERATED PURSUANT TO
30 ARTICLE THIRTY-SIX OF THIS CHAPTER; AND

31 (I) SUBMIT A REPORT TO THE COMMISSIONER BY JULY FIRST, TWO THOUSAND
32 THIRTEEN IDENTIFYING SAFE PATIENT HANDLING PROGRAM ELEMENTS AND RECOM-
33 MENDATIONS OF SAFE PATIENT LIFTING EQUIPMENT, TECHNIQUES OR DEVICES.

34 5. ALL STATE DEPARTMENTS, COMMISSIONS, AGENCIES AND PUBLIC AUTHORITIES
35 SHALL PROVIDE THE WORK GROUP WITH ANY REASONABLY REQUESTED ASSISTANCE OF
36 ADVICE IN A TIMELY MANNER.

37 S 2997-J. STATEWIDE SAFE PATIENT HANDLING POLICY. 1. ON OR BEFORE
38 JANUARY FIRST, TWO THOUSAND FOURTEEN THE COMMISSIONER, IN CONSULTATION
39 WITH THE WORK GROUP, SHALL PROMULGATE AND DISSEMINATE RULES, REGULATIONS
40 AND A STATEWIDE SAFE PATIENT HANDLING POLICY TO HEALTH CARE FACILITIES
41 COVERED BY THIS TITLE.

42 2. THE STATEWIDE SAFE PATIENT HANDLING POLICY SHALL INCLUDE RECOMMEN-
43 DATIONS REGARDING THE APPROPRIATE UTILIZATION OF SAFE PATIENT HANDLING
44 EQUIPMENT AND STRATEGIES; AND TO FACILITATE PATIENTS AND RESIDENTS
45 REACHING THE HIGHEST PRACTICAL FUNCTIONAL LEVEL WHILE SIMULTANEOUSLY
46 PROVIDING FOR THE SAFETY OF THE PATIENTS AND THE HEALTH CARE WORKER. THE
47 STATEWIDE SAFE PATIENT HANDLING POLICY SHALL INCLUDE RECOMMENDED STAND-
48 ARDS WITH REGARD TO:

49 (A) THE EQUIPMENT, DEVICES OR TECHNOLOGY TO BE CONSIDERED BY THE
50 HEALTH CARE FACILITIES' SAFE PATIENT HANDLING COMMITTEES, PURSUANT TO
51 SUBDIVISION TWO OF SECTION TWENTY-NINE HUNDRED NINETY-SEVEN-K OF THIS
52 TITLE, AND THEIR USE BY A NURSE OR DIRECT CARE WORKER WHO IS ENGAGED IN
53 PATIENT HANDLING;

54 (B) THE RATIO OF SUCH EQUIPMENT OR TECHNOLOGY BASED UPON THE TYPE OF
55 FACILITY, THE NUMBER OF BEDS IN A FACILITY, THE NUMBER OF PATIENT-HAN-

DLING 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;

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

(F) PROCEDURES REGARDING THE MANAGEMENT OF CIRCUMSTANCES THAT MAY RESULT IN UNSAFE PATIENT HANDLING.

3. EACH HEALTH CARE FACILITY SHALL FILE WITH THE DEPARTMENT BY JULY FIRST, TWO THOUSAND FOURTEEN A DETAILED PLAN TO COMPLY WITH THIS TITLE. THE DEPARTMENT SHALL ACCEPT SUCH PLAN BY JULY FIRST, TWO THOUSAND FIFTEEN. HOWEVER, EACH NURSING HOME AS DEFINED IN ARTICLE TWENTY-EIGHT-A OF THIS CHAPTER SHALL FILE WITH THE DEPARTMENT BY JULY FIRST, TWO THOUSAND FIFTEEN A DETAILED PLAN TO COMPLY WITH THIS TITLE. THE DEPARTMENT SHALL ACCEPT SUCH PLAN BY JULY FIRST, TWO THOUSAND SIXTEEN.

4. GRANTS TO APPROVED ORGANIZATIONS. (A) THE COMMISSIONER SHALL MAKE GRANTS WITHIN THE AMOUNTS APPROPRIATED TO APPROVED ORGANIZATIONS FOR THE PROVISION OF SERVICES OR EQUIPMENT RELATING TO THE IMPLEMENTATION OF THE SAFE PATIENT HANDLING ACT. SUCH SERVICES AND EQUIPMENT SHALL INCLUDE BUT NOT BE LIMITED TO:

(I) TRAINING; AND

(II) MECHANICAL LIFTS.

(B) THE COMMISSIONER SHALL GIVE NOTICE AND PROVIDE OPPORTUNITY TO SUBMIT APPLICATIONS TO IMPLEMENT SAFE PATIENT HANDLING PROGRAMS. IN ORDER TO BE CONSIDERED FOR A GRANT TO IMPLEMENT A SAFE PATIENT HANDLING PROGRAM APPLICANTS MUST SHOW EVIDENCE OF THE FOLLOWING:

(I) FINANCIAL NEED;

(II) A PLAN APPROVED BY THE DEPARTMENT; AND

(III) PREVIOUS IMPLEMENTATION STRATEGIES.

APPLICATIONS SHALL BE MADE ON FORMS PROVIDED BY THE COMMISSIONER.

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. IN HEALTH CARE FACILITIES WHERE A RESIDENT COUNCIL IS ESTABLISHED, AND WHERE FEASIBLE, AT LEAST ONE MEMBER OF THE SAFE PATIENT HANDLING COMMITTEE SHALL BE A REPRESENTATIVE FROM THE RESIDENT COUNCIL. 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) ESTABLISHED PROCEDURE TO 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 ESTABLISH

1 PROCEDURES TO ENSURE THAT RETRAINING FOR THOSE FOUND TO BE DEFICIENT IS
2 PROVIDED AS NEEDED;

3 (D) SET UP AND UTILIZE A PROCESS FOR INCIDENT INVESTIGATION AND POST-
4 INVESTIGATION REVIEW WHICH MAY INCLUDE A PLAN OF CORRECTION AND IMPE-
5 MENTATION OF CONTROLS;

6 (E) MAKE RECOMMENDATIONS FOR THE ACQUISITION OF EQUIPMENT OR PROCE-
7 DURES BEYOND THE MINIMUM STATE RECOMMENDATIONS; AND

8 (F) PERFORM AN ANNUAL PROGRAM ASSESSMENT AND EVALUATION.

9 S 2997-L. ENFORCEMENT. 1. ANY NURSE OR DIRECT CARE WORKER OR EMPLOYEE
10 REPRESENTATIVE WHO BELIEVES THE HEALTH CARE FACILITY HAS NOT MET THE
11 STANDARDS SET FORTH IN THIS TITLE SHALL BRING THE MATTER TO THE ATTEN-
12 TION OF THE HEALTH CARE FACILITY IN THE FORM OF A WRITTEN NOTICE AND
13 SHALL AFFORD THE HEALTH CARE FACILITY A REASONABLE OPPORTUNITY TO
14 CORRECT SUCH DEFICIENCIES. SUCH WRITTEN NOTICE NEED NOT BE PROVIDED
15 WHERE THE NURSE OR DIRECT CARE WORKER OR EMPLOYEE REPRESENTATIVE REASON-
16 ABLY BELIEVES THAT THE FAILURE TO MEET STANDARDS OF THE FACILITY POLICY
17 PRESENTS AN IMMINENT THREAT TO THE SAFETY OF A SPECIFIC NURSE OR DIRECT
18 CARE WORKER, OR TO THE GENERAL HEALTH OF A SPECIFIC PATIENT; IN SUCH
19 INSTANCE THE NURSE OR DIRECT CARE WORKER SHALL MAKE A GOOD FAITH EFFORT
20 TO ENSURE PATIENT SAFETY AND BRING THE MATTER TO THE ATTENTION OF THE
21 FACILITY AND THE DEPARTMENT IN THE MANNER SET FORTH IN THE FACILITY
22 POLICY.

23 2. IN THE EVENT THAT THE HEALTH CARE FACILITY RECEIVING WRITTEN NOTICE
24 PURSUANT TO SUBDIVISION ONE OF THIS SECTION DOES NOT TAKE CORRECTIVE
25 ACTION WITHIN SIXTY DAYS, OR IN THE EVENT THAT NOTICE OF A FAILURE TO
26 MEET STANDARDS IS NOT REQUIRED PURSUANT TO SUBDIVISION ONE OF THIS
27 SECTION, A NURSE OR DIRECT CARE WORKER SHALL HAVE THE RIGHT TO REFUSE TO
28 ENGAGE IN PATIENT HANDLING UNTIL THE HEALTH CARE FACILITY HAS ADEQUATELY
29 ADDRESSED THE SPECIFIC FAILURE TO MEET STANDARDS. UPON REFUSAL, SUCH
30 NURSE OR DIRECT CARE WORKER OR HIS OR HER REPRESENTATIVE SHALL FILE A
31 COMPLAINT TO THE DEPARTMENT IN THE MANNER SET FORTH IN THE STATEWIDE
32 SAFE PATIENT HANDLING POLICY.

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

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

39 5. THE DEPARTMENT AND THE DEPARTMENT OF LABOR SHALL PUBLISH AND MAKE
40 PUBLIC WHICH HEALTH CARE FACILITIES ARE IN COMPLIANCE WITH THIS TITLE.

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

43 S 6510-F. FACILITY SAFE PATIENT HANDLING POLICY. THE REFUSAL OF A
44 LICENSED OR UNLICENSED HEALTH CARE WORKER TO ENGAGE IN PATIENT HANDLING
45 WHICH IS NOT CONSISTENT WITH THE FACILITY'S SAFE PATIENT HANDLING POLICY
46 SHALL NOT BE CONSIDERED PROFESSIONAL MISCONDUCT AND SHALL NOT CONSTITUTE
47 PATIENT ABANDONMENT OR NEGLECT. THE REFUSAL OF A LICENSED OR UNLICENSED
48 HEALTH CARE WORKER TO ENGAGE IN PATIENT HANDLING SHALL NOT CONSTITUTE
49 PATIENT ABANDONMENT OR NEGLECT IF SUCH WORKER HAS, IN A MANNER CONSIST-
50 ENT WITH ARTICLE TWENTY-NINE-D OF THE PUBLIC HEALTH LAW AND THE RULES
51 AND REGULATIONS PROMULGATED PURSUANT TO SUCH ARTICLE, REFUSED A PATIENT
52 HANDLING ASSIGNMENT AND FILED A COMPLAINT WITH THE DEPARTMENT OF HEALTH.

53 S 4. This act shall take effect October 1, 2012.