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Introduced by M. of A. LANCMAN, GUNTHER, PAULIN, ROSENTHAL, ROBINSON, JAFFEE, BENEDETTO, CAHILL, GOTTFRIED, GALEF, CLARK, LUPARDO, JACOBS, GABRYSZAK, BRONSON, P. RIVERA, LINARES, WEPRIN, BARRON, M. MILLER, PERRY, PEOPLES-STOKES, HOOPER, BOYLAND, STEVENSON, ROBERTS, MAGNARELLI, MAISEL, DINOWITZ, BROOK-KRASNY, BRINDISI -- Multi-Sponsored by -- M. of A. ABINANTI, ARROYO, BRENNAN, CASTELLI, COLTON, FARRELL, GLICK, HEASTIE, JOHNS, LATIMER, LIFTON, MAGEE, MCENENY, MENG, J. MILLER, MILLMAN, MONTESANO, NOLAN, RAIA, RUSSELL, SWEENEY, WEISENBERG -- read once and referred to the Committee on Health -- reported and referred to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- advanced to a third reading, amended and ordered reprinted, retaining its place on the order of third reading -- again amended on third reading, ordered reprinted, retaining its place on the order of third reading

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.

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

LBD04321-06-2

2007-L. ENFORCEMENT.

S 2007-G. LEGISLATIVE INTENT. THE LEGISLATURE HEREBY FINDS AND DECLARES THAT IT IS IN THE PUBLIC INTEREST TO ENACT A STATEWIDE SAFE PATIENT HANDLING POLICY FOR HEALTH CARE FACILITIES IN NEW YORK STATE. WITHOUT SAFE PATIENT HANDLING LEGISLATION, IT IS PREDICTED THAT THE DEMAND FOR NURSING SERVICES WILL EXCEED THE SUPPLY BY NEARLY THIRTY PERCENT BY THE YEAR TWO THOUSAND TWENTY THUS DECREASING THE QUALITY OF HEALTH CARE IN NEW YORK STATE. THERE ARE MANY BENEFITS THAT CAN BE DERIVED FROM SAFE PATIENT HANDLING PROGRAMS. PATIENTS BENEFIT THROUGH IMPROVED QUALITY OF CARE AND QUALITY OF LIFE BY REDUCING THE RISK OF FALLS, BEING DROPPED, FRICTION BURNS, SKIN TEARS AND BRUISES. CAREGIVERS BENEFIT FROM THE REDUCED RISK OF CAREER ENDING AND DEBILITATING INJURIES LEADING TO INCREASED MORALE, IMPROVED JOB SATISFACTION AND LONGEVITY IN THE PROFESSION. HEALTH CARE FACILITIES REALIZE A QUICK RETURN ON THEIR INVESTMENT THROUGH REDUCED WORKERS' COMPENSATION MEDICAL AND INDEMNITY COSTS, REDUCED LOST WORKDAYS AND IMPROVED RECRUITMENT AND RETENTION OF CAREGIVERS. ALL OF THIS WILL LEAD TO FISCAL IMPROVEMENT IN HEALTH CARE IN NEW YORK STATE.

S 2007-H. DEFINITIONS. FOR THE PURPOSES OF THIS TITLE:

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

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

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

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

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

6. "SAFE PATIENT HANDLING PROGRAM" SHALL INCLUDE:

- (A) A WRITTEN POLICY STATEMENT; AND
- (B) MANAGEMENT COMMITMENT AND EMPLOYEE INVOLVEMENT; AND
- (C) COMMITTEES; AND
- (D) RISK ASSESSMENTS; AND
- (E) INCIDENT INVESTIGATION; AND
- (F) PROCUREMENT OF ENGINEERING CONTROLS, LIFTING AND TRANSFER AIDS OR ASSISTIVE DEVICES TO ENSURE SAFE PATIENT HANDLING; AND
- (G) EMPLOYEE TRAINING AND EDUCATION ON SAFE PATIENT HANDLING; AND
- (H) PROGRAM EVALUATION AND MODIFICATION.

S 2007-I. NEW YORK STATE SAFE PATIENT HANDLING TASK FORCE. 1. A NEW YORK STATE SAFE PATIENT HANDLING TASK FORCE IS HEREBY CREATED WITHIN THE DEPARTMENT. SUCH TASK FORCE SHALL CONSIST OF A TOTAL OF THIRTEEN MEMBERS AND SHALL INCLUDE THE COMMISSIONER OR HIS OR HER DESIGNEE; THE

1 COMMISSIONER OF LABOR OR HIS OR HER DESIGNEE; FIVE MEMBERS APPOINTED BY
2 THE GOVERNOR, TWO SUCH MEMBERS SHALL BE REPRESENTATIVES OF HEALTH CARE
3 ORGANIZATIONS, ONE SUCH MEMBER SHALL BE FROM AN EMPLOYEE ORGANIZATION
4 REPRESENTING NURSES AND ONE SUCH MEMBER SHALL BE FROM AN EMPLOYEE ORGANIZATION
5 REPRESENTING DIRECT CARE WORKERS; TWO SUCH MEMBERS SHALL BE
6 CERTIFIED ERGONOMIST EVALUATION SPECIALISTS; TWO MEMBERS TO BE APPOINTED
7 BY THE TEMPORARY PRESIDENT OF THE SENATE, WHO SHALL HAVE EXPERTISE IN
8 FIELDS OF DISCIPLINE RELATED TO HEALTH CARE OR OCCUPATIONAL SAFETY AND
9 ONE SUCH APPOINTEE SHALL BE FROM AN ORGANIZATION REPRESENTING EITHER A
10 NURSE OR DIRECT CARE WORKER; TWO MEMBERS TO BE APPOINTED BY THE SPEAKER
11 OF THE ASSEMBLY, WHO SHALL HAVE EXPERTISE IN FIELDS OF DISCIPLINE
12 RELATED TO HEALTH CARE OR OCCUPATIONAL SAFETY AND ONE SUCH APPOINTEE
13 SHALL BE FROM AN ORGANIZATION REPRESENTING EITHER A NURSE OR DIRECT CARE
14 WORKER; ONE MEMBER TO BE APPOINTED BY THE MINORITY LEADER OF THE SENATE,
15 WHO SHALL HAVE EXPERTISE IN FIELDS OF DISCIPLINE RELATED TO HEALTH CARE
16 OR OCCUPATIONAL SAFETY; AND ONE MEMBER APPOINTED BY THE MINORITY LEADER
17 OF THE ASSEMBLY, WHO SHALL HAVE EXPERTISE IN FIELDS OF DISCIPLINE
18 RELATED TO HEALTH CARE OR OCCUPATIONAL SAFETY.

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

22 3. THE TASK FORCE SHALL BE APPOINTED NO LATER THAN JULY FIRST, TWO
23 THOUSAND FOURTEEN AND SHALL SERVE FOR A PERIOD OF TWO YEARS; ANY VACANCIES
24 ON THE TASK FORCE SHALL BE FILLED IN THE MANNER PROVIDED FOR IN THE
25 INITIAL APPOINTMENT.

26 4. THE CHAIRPERSON OF THE TASK FORCE SHALL BE THE COMMISSIONER OR HIS
27 OR HER DESIGNEE.

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

29 6. NOTWITHSTANDING ANY OTHER PROVISION OF LAW, A MAJORITY OF THE
30 MEMBERS OF THE TASK FORCE THEN IN OFFICE SHALL CONSTITUTE A QUORUM FOR
31 THE TRANSACTION OF BUSINESS OR THE EXERCISE OF POWER OR FUNCTION OF THE
32 TASK FORCE. AN ACT, DETERMINATION OR DECISION OF THE MAJORITY OF THE
33 MEMBERS OF THE TASK FORCE SHALL BE HELD TO BE THE ACT, DETERMINATION OR
34 DECISION OF THE TASK FORCE.

35 7. THE TASK FORCE SHALL:

36 (A) PREPARE A POLICY STATEMENT REQUIRING A COMPREHENSIVE SAFE PATIENT
37 HANDLING PROGRAM TO BE IMPLEMENTED AT ALL HEALTH CARE FACILITIES, AS
38 DEFINED IN SUBDIVISION ONE OF SECTION TWENTY-NINE HUNDRED NINETY-SEVEN-H
39 OF THIS TITLE. THE POLICY STATEMENT SHALL INCLUDE THE REQUIREMENTS FOR
40 DEVELOPING AND IMPLEMENTING AN EFFECTIVE SAFE PATIENT HANDLING PROGRAM
41 THAT SHALL INCLUDE ALL ELEMENTS SPECIFIED IN SUBDIVISION SIX OF SECTION
42 TWENTY-NINE HUNDRED NINETY-SEVEN-H OF THIS TITLE;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

49 (D) SET UP AND UTILIZE A PROCESS FOR INCIDENT INVESTIGATION AND POST-
50 INVESTIGATION REVIEW WHICH INCLUDES A PLAN OF CORRECTION AND IMPLEMENTA-
51 TION OF CONTROLS;

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

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

55 S 2997-L. ENFORCEMENT. 1. ANY NURSE OR DIRECT CARE WORKER OR EMPLOYEE
56 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.

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

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

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

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

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

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

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

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