

2011-2012 Regular Sessions

I N S E N A T E

(PREFILED)

January 5, 2011

Introduced by Sen. MAZIARZ -- read twice and ordered printed, and when printed to be committed to the Committee on Health

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. Article 29-D of the public health law is amended by adding
2 a new title 4 to read as follows:

3 TITLE 4

4 SAFE PATIENT HANDLING POLICY

5 SECTION 2999-G. LEGISLATIVE INTENT.

6 2999-H. DEFINITIONS.

7 2999-I. NEW YORK STATE SAFE PATIENT HANDLING TASK FORCE.

8 2999-J. STATEWIDE SAFE PATIENT HANDLING POLICY.

9 2999-K. HEALTH CARE FACILITY SAFE PATIENT HANDLING COMMITTEES.

10 2999-L. ENFORCEMENT.

11 S 2999-G. LEGISLATIVE INTENT. THE LEGISLATURE HEREBY FINDS AND
12 DECLARES THAT IT IS IN THE PUBLIC INTEREST TO ENACT A STATEWIDE SAFE
13 PATIENT HANDLING POLICY FOR HEALTH CARE FACILITIES IN NEW YORK STATE.
14 WITHOUT SAFE PATIENT HANDLING LEGISLATION, IT IS PREDICTED THAT THE
15 DEMAND FOR NURSING SERVICES WILL EXCEED THE SUPPLY BY NEARLY THIRTY
16 PERCENT BY THE YEAR TWO THOUSAND TWENTY THUS DECREASING THE QUALITY OF
17 HEALTH CARE IN NEW YORK STATE. THERE ARE MANY BENEFITS THAT CAN BE
18 DERIVED FROM SAFE PATIENT HANDLING PROGRAMS. PATIENTS BENEFIT THROUGH
19 IMPROVED QUALITY OF CARE AND QUALITY OF LIFE BY REDUCING THE RISK OF
20 FALLS, BEING DROPPED, FRICTION BURNS, SKIN TEARS AND BRUISES. CAREGIVERS
21 BENEFIT FROM THE REDUCED RISK OF CAREER ENDING AND DEBILITATING INJURIES
22 LEADING TO INCREASED MORALE, IMPROVED JOB SATISFACTION AND LONGEVITY IN
23 THE PROFESSION. HEALTH CARE FACILITIES REALIZE A QUICK RETURN ON THEIR
24 INVESTMENT THROUGH REDUCED WORKERS' COMPENSATION MEDICAL AND INDEMNITY

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

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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 2999-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 THE EMPLOYER, WHICH PROVIDES HEALTH CARE SERVICES IN A
9 FACILITY LICENSED OR OPERATED PURSUANT TO ARTICLE TWENTY-EIGHT, TWENTY-
10 EIGHT-A OR THIRTY-SIX OF THIS CHAPTER, OR THE MENTAL HYGIENE LAW, THE
11 EDUCATION LAW OR THE CORRECTION LAW, INCLUDING ANY FACILITY OPERATED BY
12 THE STATE, A POLITICAL SUBDIVISION OR A PUBLIC BENEFIT CORPORATION AS
13 DEFINED BY SECTION SIXTY-SIX OF THE GENERAL CONSTRUCTION LAW.

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

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

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

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

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

29 (A) A WRITTEN POLICY STATEMENT; AND

30 (B) MANAGEMENT COMMITMENT AND EMPLOYEE INVOLVEMENT; AND

31 (C) COMMITTEES; AND

32 (D) RISK ASSESSMENTS; AND

33 (E) INCIDENT INVESTIGATION; AND

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

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

37 (H) PROGRAM EVALUATION AND MODIFICATION.

38 S 2999-I. NEW YORK STATE SAFE PATIENT HANDLING TASK FORCE. 1. A NEW
39 YORK STATE SAFE PATIENT HANDLING TASK FORCE IS HEREBY CREATED WITHIN THE
40 DEPARTMENT. SUCH TASK FORCE SHALL CONSIST OF A TOTAL OF ELEVEN MEMBERS
41 AND SHALL INCLUDE THE COMMISSIONER OR HIS OR HER DESIGNEE; THE COMMIS-
42 SIONER OF LABOR OR HIS OR HER DESIGNEE; THREE MEMBERS APPOINTED BY THE
43 GOVERNOR, TWO SUCH MEMBERS SHALL BE REPRESENTATIVES OF HEALTH CARE
44 ORGANIZATIONS, ONE SUCH MEMBER SHALL BE FROM AN EMPLOYEE ORGANIZATION
45 REPRESENTING NURSES AND ONE SUCH MEMBER SHALL BE FROM AN EMPLOYEE ORGAN-
46 IZATION REPRESENTING DIRECT CARE WORKERS; TWO SUCH MEMBERS SHALL BE
47 CERTIFIED ERGONOMIST EVALUATION SPECIALISTS; TWO MEMBERS TO BE APPOINTED
48 BY THE TEMPORARY PRESIDENT OF THE SENATE, WHO SHALL HAVE EXPERTISE IN
49 FIELDS OR DISCIPLINE RELATED TO HEALTH CARE OR OCCUPATIONAL SAFETY AND
50 ONE SUCH APPOINTEE MUST BE FROM AN ORGANIZATION REPRESENTING EITHER A
51 NURSE OR DIRECT CARE WORKER; TWO MEMBERS TO BE APPOINTED BY THE SPEAKER
52 OF THE ASSEMBLY, WHO SHALL HAVE EXPERTISE IN FIELDS OR DISCIPLINE
53 RELATED TO HEALTH CARE OR OCCUPATIONAL SAFETY AND ONE SUCH APPOINTEE
54 MUST BE FROM AN ORGANIZATION REPRESENTING EITHER A NURSE OR DIRECT CARE
55 WORKER; ONE MEMBER TO BE APPOINTED BY THE MINORITY LEADER OF THE SENATE,
56 WHO SHALL HAVE EXPERTISE IN FIELDS OR DISCIPLINE RELATED TO HEALTH CARE

1 OR OCCUPATIONAL SAFETY; AND ONE MEMBER APPOINTED BY THE MINORITY LEADER
2 OF THE ASSEMBLY, WHO SHALL HAVE EXPERTISE IN FIELDS OR DISCIPLINE
3 RELATED TO HEALTH CARE OR OCCUPATIONAL SAFETY.

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

7 3. THE TASK FORCE SHALL BE APPOINTED NO LATER THAN JULY FIRST, TWO
8 THOUSAND TWELVE AND SHALL SERVE FOR A PERIOD OF TWO YEARS; ANY VACANCIES
9 ON THE TASK FORCE SHALL BE FILLED IN THE MANNER PROVIDED FOR IN THE
10 INITIAL APPOINTMENT.

11 4. THE CHAIRPERSON OF THE TASK FORCE SHALL BE THE COMMISSIONER OR HIS
12 OR HER DESIGNEE.

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

14 6. NOTWITHSTANDING ANY OTHER PROVISION OF LAW, A MAJORITY OF THE
15 MEMBERS OF THE TASK FORCE THEN IN OFFICE SHALL CONSTITUTE A QUORUM FOR
16 THE TRANSACTION OF BUSINESS OR THE EXERCISE OF POWER OR FUNCTION OF THE
17 TASK FORCE. AN ACT, DETERMINATION OR DECISION OF THE MAJORITY OF THE
18 MEMBERS OF THE TASK FORCE SHALL BE HELD TO BE THE ACT, DETERMINATION OR
19 DECISION OF THE TASK FORCE.

20 7. POWERS AND DUTIES. THE TASK FORCE ACT SHALL:

21 (A) PREPARE A POLICY STATEMENT REQUIRING A COMPREHENSIVE SAFE PATIENT
22 HANDLING PROGRAM TO BE IMPLEMENTED AT ALL HEALTH CARE FACILITIES, AS
23 DEFINED IN SUBDIVISION ONE OF SECTION TWENTY-NINE HUNDRED NINETY-NINE-H
24 OF THIS TITLE. THE POLICY STATEMENT SHALL INCLUDE THE REQUIREMENTS FOR
25 DEVELOPING AND IMPLEMENTING AN EFFECTIVE SAFE PATIENT HANDLING PROGRAM
26 THAT SHALL INCLUDE ALL ELEMENTS SPECIFIED IN SUBDIVISION SIX OF SECTION
27 TWENTY-NINE HUNDRED NINETY-NINE-H OF THIS TITLE;

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

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

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

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

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

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

38 (H) ALL STATE DEPARTMENTS, COMMISSIONS, AGENCIES OR PUBLIC AUTHORITIES
39 SHALL PROVIDE AND ADVISE IN A TIMELY MANNER AND OTHERWISE ASSIST THE
40 TASK FORCE WITH ITS WORK; AND

41 (I) SUBMIT A REPORT IDENTIFYING SAFE PATIENT HANDLING PROGRAM ELEMENTS
42 AND RECOMMENDATIONS OF SAFE PATIENT LIFTING EQUIPMENT, TECHNIQUES OR
43 DEVICES TO THE COMMISSIONER BY JULY FIRST, TWO THOUSAND THIRTEEN.

44 S 2999-J. STATEWIDE SAFE PATIENT HANDLING POLICY. 1. THE COMMISSIONER,
45 IN CONSULTATION WITH THE TASK FORCE, SHALL PROMULGATE RULES AND REGU-
46 LATIONS FOR A STATEWIDE SAFE PATIENT HANDLING POLICY FOR HEALTH CARE
47 FACILITIES COVERED BY THIS TITLE. SUCH POLICY SHALL BE MADE AVAILABLE TO
48 ALL FACILITIES COVERED BY THIS TITLE ON OR BEFORE JANUARY FIRST, TWO
49 THOUSAND FOURTEEN.

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

52 (A) THE EQUIPMENT, DEVICES OR TECHNOLOGY TO BE USED BY A NURSE OR
53 DIRECT CARE WORKER WHO IS ENGAGED IN 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-

1 DLING TASKS, TYPES OF CARE UNITS, PATIENT POPULATIONS, AND PATIENT CARE
2 AREAS;

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

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

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

10 3. FACILITIES COVERED UNDER THIS TITLE SHALL FILE A PLAN WITH THE
11 DEPARTMENT BY JULY FIRST, TWO THOUSAND FOURTEEN DETAILING THEIR POLICY
12 TO BE IN COMPLIANCE WITH THE RULES AND REGULATIONS OF THE STATEWIDE SAFE
13 PATIENT HANDLING POLICY THAT MUST BE ACCEPTED BY THE DEPARTMENT BY JULY
14 FIRST, TWO THOUSAND FIFTEEN.

15 S 2999-K. HEALTH CARE FACILITY SAFE PATIENT HANDLING COMMITTEES. 1.
16 EACH HEALTH CARE FACILITY MUST ESTABLISH A SAFE PATIENT HANDLING COMMIT-
17 TEE EITHER BY CREATING A NEW COMMITTEE OR ASSIGNING THE POWERS AND
18 DUTIES TO AN EXISTING COMMITTEE. AT LEAST ONE-HALF OF THE MEMBERS OF
19 THE SAFE PATIENT HANDLING COMMITTEE SHALL BE FRONTLINE NON-MANAGERIAL
20 NURSES OR DIRECT CARE WORKERS. AT LEAST ONE NON-MANAGERIAL NURSE AND ONE
21 NON-MANAGERIAL DIRECT CARE WORKER MUST BE ON THE SAFE PATIENT HANDLING
22 COMMITTEE. THE COMMITTEE SHALL HAVE CO-CHAIRS WITH ONE FROM MANAGEMENT
23 AND ONE FRONTLINE NON-MANAGERIAL NURSE OR DIRECT CARE WORKER.

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

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

31 (C) PROVIDE INITIAL AND ON-GOING YEARLY TRAINING AND EDUCATION ON SAFE
32 PATIENT HANDLING FOR CURRENT EMPLOYEES AND NEW HIRES. ENSURE RETRAINING
33 FOR THOSE FOUND TO BE DEFICIENT IS SCHEDULED AS NEEDED AND DOES NOT
34 AFFECT CURRENT EMPLOYMENT STATUS OF THE AFFECTED EMPLOYEE OR EMPLOYEES;

35 (D) SET UP AND UTILIZE A PROCESS FOR INCIDENT INVESTIGATION AND AFTER
36 ACTION REVIEW WHICH INCLUDES A PLAN OF CORRECTION AND IMPLEMENTATION OF
37 CONTROLS;

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

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

41 S 2999-L. ENFORCEMENT. 1. ANY NURSE OR DIRECT CARE WORKER OR EMPLOYEE
42 REPRESENTATIVE WHO BELIEVES THE FACILITY HAS NOT MET THE STANDARDS SET
43 FORTH IN THIS TITLE SHALL BRING THE MATTER TO THE ATTENTION OF A SUPER-
44 VISOR IN THE FORM OF A WRITTEN NOTICE AND SHALL AFFORD THE HEALTH CARE
45 FACILITY A REASONABLE OPPORTUNITY TO CORRECT SUCH DEFICIENCIES.

46 2. SUCH COMPLAINT SHALL NOT APPLY WHERE IMMINENT DANGER OR THREAT
47 EXISTS TO THE SAFETY OF A SPECIFIC NURSE OR DIRECT CARE WORKER OR TO THE
48 GENERAL HEALTH OF A SPECIFIC PATIENT AND WHEN THE NURSE OR DIRECT CARE
49 WORKER OR EMPLOYEE REPRESENTATIVE BELIEVES IN GOOD FAITH THAT REPORTING
50 WILL NOT RESULT IN CORRECTIVE ACTION.

51 3. IN THE EVENT THE HEALTH CARE FACILITY DOES NOT TAKE CORRECTIVE
52 ACTION WITHIN SIXTY DAYS OR IN THE EVENT SUCH NURSE OR DIRECT CARE WORK-
53 ER BELIEVES THAT AN IMMEDIATE DANGER OR THREAT EXISTS TO SUCH EMPLOYEE
54 OR TO THE GENERAL HEALTH OF A SPECIFIC PATIENT, SUCH EMPLOYEE SHALL HAVE
55 THE RIGHT TO REFUSE TO ENGAGE IN PATIENT HANDLING UNTIL THE HEALTH CARE
56 FACILITY HAS ADEQUATELY ADDRESSED THE SPECIFIC IMMEDIATE DANGER OR

1 THREAT TO SUCH EMPLOYEE OR PATIENT. UPON REFUSAL, THE NURSE, DIRECT CARE
2 WORKER OR EMPLOYEE REPRESENTATIVE SHALL FILE A COMPLAINT TO THE DEPART-
3 MENT IN THE MANNER SET FORTH IN THE STATEWIDE SAFE PATIENT HANDLING
4 POLICY.

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

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

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

14 S 2. The education law is amended by adding a new section 6510-f to
15 read as follows:

16 S 6510-F. STATE SAFE PATIENT HANDLING POLICY. 1. THE REFUSAL OF A
17 LICENSED PRACTICAL NURSE OR A REGISTERED NURSE TO COMPLY WITH THE STATE
18 SAFE PATIENT HANDLING POLICY OR A FACILITY'S SAFE PATIENT HANDLING POLI-
19 CY SHALL NOT BE CONSIDERED PROFESSIONAL MISCONDUCT. THE REFUSAL OF A
20 LICENSED PRACTICAL NURSE OR A REGISTERED NURSE TO ENGAGE IN PATIENT
21 HANDLING SHALL NOT CONSTITUTE PATIENT ABANDONMENT OR NEGLECT IF SUCH
22 NURSE, HAS IN A MANNER CONSISTENT WITH THE RULES AND REGULATIONS PROMUL-
23 GATED BY TITLE FOUR OF ARTICLE TWENTY-NINE-D OF THE PUBLIC HEALTH LAW,
24 REFUSED A PATIENT HANDLING ASSIGNMENT AND FILED A COMPLAINT WITH THE
25 DEPARTMENT.

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

35 S 3. This act shall take effect on the ninetieth day after it shall
36 have become a law.