S T A T E O F N E W Y O R K

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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:

Section 1. Article 29-D of the public health law is amended by adding a new title 4 to read as follows:

TITLE 4

SAFE PATIENT HANDLING POLICY

SECTION 2999-G. LEGISLATIVE INTENT.
2999-H. DEFINITIONS.
2999-I. NEW YORK STATE SAFE PATIENT HANDLING TASK FORCE.
2999-J. STATEWIDE SAFE PATIENT HANDLING POLICY.
2999-K. HEALTH CARE FACILITY SAFE PATIENT HANDLING COMMITTEES.
2999-L. ENFORCEMENT.

S 2999-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

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

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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 2999-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 HEALTHCARE 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 2999-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 ELEVEN MEMBERS AND SHALL INCLUDE THE COMMISSIONER OR HIS OR HER DESIGNEE; THE COMMISSIONER OF LABOR OR HIS OR HER DESIGNEE; THREE MEMBERS APPOINTED BY THE GOVERNOR, TWO SUCH MEMBERS SHALL BE REPRESENTATIVES OF HEALTH CARE ORGANIZATIONS, ONE SUCH MEMBER SHALL BE FROM AN EMPLOYEE ORGANIZATION REPRESENTING NURSES AND ONE SUCH MEMBER SHALL BE FROM AN EMPLOYEE ORGANIZATION REPRESENTING DIRECT CARE WORKERS; TWO SUCH MEMBERS SHALL BE CERTIFIED ERGONOMIST EVALUATION SPECIALISTS; TWO MEMBERS TO BE APPOINTED BY THE TEMPORARY PRESIDENT OF THE SENATE, WHO SHALL HAVE EXPERTISE IN FIELDS OR DISCIPLINE RELATED TO HEALTH CARE OR OCCUPATIONAL SAFETY AND ONE SUCH APPOINTEE MUST BE FROM AN ORGANIZATION REPRESENTING EITHER A NURSE OR DIRECT CARE WORKER; TWO MEMBERS TO BE APPOINTED BY THE SPEAKER OF THE ASSEMBLY, WHO SHALL HAVE EXPERTISE IN FIELDS OR DISCIPLINE RELATED TO HEALTH CARE OR OCCUPATIONAL SAFETY AND ONE SUCH APPOINTEE MUST BE FROM AN ORGANIZATION REPRESENTING EITHER A NURSE OR DIRECT CARE WORKER; ONE MEMBER TO BE APPOINTED BY THE MINORITY LEADER OF THE SENATE, WHO SHALL HAVE EXPERTISE IN FIELDS OR DISCIPLINE RELATED TO HEALTH CARE

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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-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; AND

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

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

S 2999-K. HEALTH CARE FACILITY SAFE PATIENT HANDLING COMMITTEES. 1. EACH HEALTH CARE FACILITY MUST 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 MUST BE ON THE SAFE PATIENT HANDLING COMMITTEE. THE COMMITTEE SHALL HAVE 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 TO PERFORM 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. ENSURE RETRAINING FOR THOSE FOUND TO BE DEFICIENT IS SCHEDULED AS NEEDED AND DOES NOT AFFECT CURRENT EMPLOYMENT STATUS OF THE AFFECTED EMPLOYEE OR EMPLOYEES;

(D) SET UP AND UTILIZE A PROCESS FOR INCIDENT INVESTIGATION AND AFTER ACTION 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 2999-L. ENFORCEMENT. 1. ANY NURSE OR DIRECT CARE WORKER OR EMPLOYEE REPRESENTATIVE WHO BELIEVES THE FACILITY HAS NOT MET THE STANDARDS SET FORTH IN THIS TITLE SHALL BRING THE MATTER TO THE ATTENTION OF A SUPERVISOR IN THE FORM OF A WRITTEN NOTICE AND SHALL AFFORD THE HEALTH CARE FACILITY A REASONABLE OPPORTUNITY TO CORRECT SUCH DEFICIENCIES.

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

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

THREAT TO SUCH EMPLOYEE OR PATIENT. UPON REFUSAL, THE NURSE, DIRECT CARE WORKER OR EMPLOYEE REPRESENTATIVE SHALL FILE A COMPLAINT TO THE DEPARTMENT IN THE MANNER SET FORTH IN THE STATEWIDE SAFE PATIENT HANDLING POLICY.

4. 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.

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

6. 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 2. 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 COMPLY 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 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 THE RULES AND REGULATIONS PROMULGATED BY TITLE FOUR OF ARTICLE TWENTY-NINE-D OF THE PUBLIC HEALTH LAW, REFUSED A PATIENT HANDLING ASSIGNMENT AND FILED A COMPLAINT WITH THE DEPARTMENT.

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 THE RULES AND REGULATIONS PROMULGATED BY TITLE FOUR OF ARTICLE TWENTY-NINE-D OF THE PUBLIC HEALTH LAW, REFUSED A PATIENT HANDLING ASSIGNMENT AND FILED A COMPLAINT WITH THE DEPARTMENT.

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