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

10715--A

I N A S S E M B L Y

June 16, 2012

Introduced by COMMITTEE ON RULES -- (at request of M. of A. Gunther, Weprin, Ramos, Pretlow, Crespo, Barrett, Robinson, Cahill, Jaffee, Gabryszak, Englebright, Peoples-Stokes, Skartados, Lifton, Cymbrowitz, Glick, Moya, Lupardo, Braunstein, Brindisi, DenDekker, Gibson, Latimer, Linares, Mayer, Reilly, Schimel, Simotas) -- read once and referred to the Committee on Health -- 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:

Section 1. This act shall be known and may be cited as the "safe patient handling act".

S 2. Article 29-D of the public health law is amended by adding a new title 1-A to read as follows:

TITLE 1-A

SAFE PATIENT HANDLING POLICY

SECTION 2997-G. LEGISLATIVE INTENT.
2997-H. DEFINITIONS.
2997-I. STATEWIDE SAFE PATIENT HANDLING WORK GROUP.
2997-J. STATEWIDE SAFE PATIENT HANDLING POLICY.
2997-K. HEALTH CARE FACILITY SAFE PATIENT HANDLING COMMITTEES.
2997-L. ENFORCEMENT.

S 2997-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

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

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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 2997-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 AN EMPLOYER THAT PROVIDES HEALTH CARE SERVICES IN A FACILITY LICENSED OR OPERATED PURSUANT TO ARTICLE TWENTY-EIGHT, TWENTY-EIGHT-A OF THIS CHAPTER, OR THE MENTAL HYGIENE LAW, ARTICLE EIGHT OR TITLE EIGHT OF THE EDUCATION LAW, ARTICLE NINETEEN-G OF THE EXECUTIVE LAW OR THE CORRECTION LAW, INCLUDING ANY FACILITY OPERATED BY THE STATE OR A PUBLIC BENEFIT CORPORATION AS DEFINED BY SECTION SIXTY-SIX OF THE GENERAL CONSTRUCTION LAW; PROVIDED THAT THE PROVISIONS OF THIS TITLE SHALL NOT APPLY TO ANY FACILITY OPERATED OR FUNDED BY ANY MUNICIPAL CORPORATION, AS DEFINED IN SECTION TWO OF THE GENERAL MUNICIPAL LAW, EXCEPT THAT SUCH PROVISIONS SHALL APPLY TO FACILITIES LICENSED OR OPERATED BY ANY POLITICAL SUBDIVISION OF THE STATE PURSUANT TO ARTICLE TWENTY-EIGHT OR TWENTY-EIGHT-A OF THIS CHAPTER.

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 TRANSFERRING AND REPOSITIONING OF HEALTH CARE PATIENTS AND RESIDENTS IN HEALTH CARE FACILITIES.

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

(I) A WRITTEN POLICY STATEMENT; AND

(II) MANAGEMENT COMMITMENT AND EMPLOYEE INVOLVEMENT; AND

(III) COMMITTEES; AND

(IV) A FACILITY SAFE PATIENT HANDLING PROGRAM.

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

(I) RISK ASSESSMENTS; AND

(II) INCIDENT INVESTIGATION; AND

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

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

(V) PROGRAM EVALUATION AND MODIFICATION.

S 2997-I. STATEWIDE SAFE PATIENT HANDLING WORK GROUP. 1. A STATEWIDE SAFE PATIENT HANDLING WORK GROUP IS HEREBY CREATED WITHIN THE DEPARTMENT. SUCH WORK GROUP SHALL CONSIST OF, AT MINIMUM, THE COMMISSIONER OR HIS OR HER DESIGNEE; THE COMMISSIONER OF LABOR OR HIS OR HER DESIGNEE; REPRESENTATIVES OF HEALTH CARE ORGANIZATIONS, REPRESENTATIVES FROM EMPLOYEE ORGANIZATIONS REPRESENTING NURSES AND REPRESENTATIVES FROM

EMPLOYEE ORGANIZATIONS REPRESENTING DIRECT CARE WORKERS; REPRESENTATIVES WHO ARE CERTIFIED ERGONOMIST EVALUATION SPECIALISTS AND REPRESENTATIVES WHO HAVE EXPERIENCE IN OCCUPATIONAL HEALTH AND SAFETY.

2. WORK GROUP 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 WORK GROUP SHALL BE ESTABLISHED NO LATER THAN JANUARY FIRST, TWO THOUSAND THIRTEEN.

4. THE WORK GROUP SHALL:

(A) PREPARE A STATEWIDE POLICY STATEMENT OUTLINING THE REQUIREMENT OF 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-SEVEN-H OF THIS TITLE. THE POLICY STATEMENT SHALL OUTLINE THE REQUIREMENTS FOR DEVELOPING AND IMPLEMENTING A SAFE PATIENT HANDLING PROGRAM THAT MUST INCLUDE ALL ELEMENTS SPECIFIED IN SUBDIVISION SIX OF SECTION TWENTY-NINE HUNDRED NINETY-SEVEN-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) IDENTIFY OR DEVELOP TRAINING MATERIALS AND PROCEDURES WITH REGARD TO THE EQUIPMENT OR TECHNOLOGY RECOMMENDED BY THE STATEWIDE POLICY;

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

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

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

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

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

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

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

2. THE STATEWIDE SAFE PATIENT HANDLING POLICY SHALL INCLUDE RECOMMENDATIONS REGARDING THE APPROPRIATE UTILIZATION OF SAFE PATIENT HANDLING EQUIPMENT AND STRATEGIES; AND TO FACILITATE PATIENTS AND RESIDENTS REACHING THE HIGHEST PRACTICAL FUNCTIONAL LEVEL WHILE SIMULTANEOUSLY PROVIDING FOR THE SAFETY OF THE PATIENTS AND THE HEALTH CARE WORKER. THE STATEWIDE SAFE PATIENT HANDLING POLICY SHALL INCLUDE RECOMMENDED STANDARDS WITH REGARD TO:

(A) THE EQUIPMENT, DEVICES OR TECHNOLOGY TO BE CONSIDERED BY THE HEALTH CARE FACILITIES' SAFE PATIENT HANDLING COMMITTEES, PURSUANT TO SUBDIVISION TWO OF SECTION TWENTY-NINE HUNDRED NINETY-SEVEN-K OF THIS TITLE, AND THEIR USE 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;

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

(D) SET UP AND UTILIZE A PROCESS FOR INCIDENT INVESTIGATION AND POST-INVESTIGATION REVIEW WHICH MAY INCLUDE 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 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. SUCH WRITTEN NOTICE NEED NOT BE PROVIDED WHERE THE NURSE OR DIRECT CARE WORKER OR EMPLOYEE REPRESENTATIVE REASONABLY BELIEVES THAT THE FAILURE TO MEET STANDARDS OF THE FACILITY POLICY PRESENTS AN IMMINENT THREAT TO THE SAFETY OF A SPECIFIC NURSE OR DIRECT CARE WORKER, OR TO THE GENERAL HEALTH OF A SPECIFIC PATIENT; IN SUCH INSTANCE THE NURSE OR DIRECT CARE WORKER SHALL MAKE A GOOD FAITH EFFORT TO ENSURE PATIENT SAFETY AND BRING THE MATTER TO THE ATTENTION OF THE FACILITY AND THE DEPARTMENT IN THE MANNER SET FORTH IN THE FACILITY POLICY.

2. IN THE EVENT THAT THE HEALTH CARE FACILITY RECEIVING WRITTEN 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 THIS TITLE.

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

S 6510-F. FACILITY SAFE PATIENT HANDLING POLICY. THE REFUSAL OF A LICENSED OR UNLICENSED HEALTH CARE WORKER TO ENGAGE IN PATIENT HANDLING WHICH IS NOT CONSISTENT WITH THE FACILITY'S SAFE PATIENT HANDLING POLICY SHALL NOT BE CONSIDERED PROFESSIONAL MISCONDUCT AND SHALL NOT CONSTITUTE PATIENT ABANDONMENT OR NEGLECT. 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 October 1, 2012.