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

1134

2011-2012 Regular Sessions

I N S E N A T E

January 5, 2011

Introduced by Sens. PARKER, DIAZ, DILAN, HASSELL-THOMPSON, MONTGOMERY, SAMPSON -- read twice and ordered printed, and when printed to be committed to the Committee on Health

AN ACT to amend the public health law, in relation to establishing the "safe staffing for hospital care act"

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Short title. This act shall be known as the "safe staffing for hospital care act".

S 2. Legislative findings and intent. The legislature hereby finds and declares that the state has a substantial interest in assuring that delivery of healthcare services to patients in healthcare facilities located within this state is adequate and safe and that healthcare facilities retain sufficient nursing staff so as to promote optimal healthcare outcomes. Recent changes in our healthcare delivery system are resulting in a higher acuity level among patients in healthcare facilities. Inadequate hospital staffing results in dangerous medical errors and patient infections. Inadequate and poorly monitored nurse staffing practices can adversely impact the health of patients who enter hospitals and outpatient emergency and surgical centers. A substantial number of nurses indicate that hospital-patient acuity measurements are inadequate and that many hospitals rarely, if ever, staff according to an acuity measurement tool. Hospital nurses work substantial overtime hours and nurses working twelve-hour shifts work the most additional overtime hours per week. Mandatory overtime and lengthy work hours for direct-care nurses constitute a threat to the health and safety of patients, adversely impact the general well-being of nurses and result in greater turnover, which increases long-term shortage of nursing personnel. Establishing staffing standards will ensure that healthcare facilities throughout the state operate in a manner that guarantees the public safety and the delivery of quality healthcare services. The

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

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intent of this act is to protect the health and safety of the residents of New York state by ensuring adequate protection and care for patients in healthcare facilities.

S 3. The public health law is amended by adding a new article 28-F to read as follows:

ARTICLE 28-F
SAFE STAFFING FOR HOSPITAL CARE

SECTION 2899-AA. FACILITY STAFFING STANDARD.
2899-BB. COMPLIANCE WITH PLAN AND RECORDKEEPING.
2899-CC. MANDATORY OVERTIME AND EXCESSIVE DUTY HOURS.
2899-DD. EMPLOYEE RIGHTS.
2899-EE. ENFORCEMENT.

S 2899-AA. FACILITY STAFFING STANDARD. 1. EACH FACILITY LICENSED PURSUANT TO THIS ARTICLE SHALL ENSURE THAT IT IS STAFFED IN A MANNER THAT PROVIDES SUFFICIENT, APPROPRIATELY QUALIFIED NURSING STAFF OF EACH CLASSIFICATION IN EACH DEPARTMENT OR UNIT WITHIN THE FACILITY IN ORDER TO MEET THE INDIVIDUALIZED CARE NEEDS OF PATIENTS.

2. NOTWITHSTANDING ANY LAW TO THE CONTRARY, AS A CONDITION OF LICENSING, EACH HEALTHCARE FACILITY LICENSED WITHIN THE STATE SHALL ANNUALLY SUBMIT TO THE DEPARTMENT A DOCUMENTED STAFFING PLAN TOGETHER WITH A WRITTEN CERTIFICATION THAT THE STAFFING PLAN IS SUFFICIENT TO PROVIDE ADEQUATE AND APPROPRIATE DELIVERY OF HEALTHCARE SERVICES TO PATIENTS FOR THE ENSUING YEAR. THE STAFFING PLAN MUST:

(A) MEET THE MINIMUM REQUIREMENTS ESTABLISHED IN SUBDIVISION THREE OF THIS SECTION.

(B) BE ADEQUATE TO MEET ANY ADDITIONAL REQUIREMENTS PROVIDED BY OTHER LAWS OR REGULATIONS.

(C) EMPLOY AND IDENTIFY AN APPROVED ACUITY SYSTEM FOR ADDRESSING FLUCTUATIONS IN ACTUAL PATIENT ACUITY LEVELS AND NURSING CARE REQUIREMENTS REQUIRING INCREASED STAFFING LEVELS ABOVE THE MINIMUMS SET FORTH IN THE PLAN.

(D) FACTOR IN OTHER UNIT OR DEPARTMENT WORK, SUCH AS DISCHARGES, TRANSFERS AND ADMISSIONS, AND ADMINISTRATIVE AND SUPPORT TASKS, THAT IS EXPECTED TO BE DONE BY DIRECT-CARE NURSES IN ADDITION TO DIRECT NURSING CARE.

(E) IDENTIFY THE ASSESSMENT TOOL USED TO VALIDATE THE ACUITY SYSTEM RELIED ON IN THE PLAN.

(F) IDENTIFY THE SYSTEM THAT WILL BE USED TO DOCUMENT ACTUAL STAFFING ON A DAILY BASIS WITHIN EACH DEPARTMENT OR UNIT.

(G) INCLUDE A WRITTEN ASSESSMENT OF THE ACCURACY OF THE PRIOR YEAR'S STAFFING PLAN IN LIGHT OF ACTUAL STAFFING NEEDS.

(H) IDENTIFY EACH NURSE STAFF CLASSIFICATION REFERENCED THEREIN TOGETHER WITH A STATEMENT SETTING FORTH MINIMUM QUALIFICATIONS FOR EACH SUCH CLASSIFICATION.

(I) BE DEVELOPED IN CONSULTATION WITH THE DIRECT-CARE NURSING STAFF WITHIN EACH DEPARTMENT OR UNIT OR, WHERE SUCH STAFF IS REPRESENTED, WITH THE APPLICABLE RECOGNIZED OR CERTIFIED COLLECTIVE BARGAINING REPRESENTATIVE OR REPRESENTATIVES OF THE DIRECT-CARE NURSING STAFF.

3. THE HEALTHCARE FACILITY'S STAFFING PLAN MUST INCORPORATE, AT A MINIMUM, THE FOLLOWING DIRECT-CARE NURSE-TO-PATIENT RATIOS: PEDIATRIC RECOVERY ROOM--ONE TO ONE, OPERATING ROOM CIRCULATING NURSE--ONE TO ONE, SPECIAL PROCEDURES (E.G. CATH LAB, RADIOLOGY, ENDOSCOPY)--ONE TO ONE, TRAUMA--ONE TO ONE, BURN UNIT--ONE TO TWO, CRITICAL CARE--ONE TO TWO, LABOR AND DELIVERY--ONE TO TWO, ADULT RECOVERY ROOM--ONE TO TWO, EMER-

GENCY ROOM--ONE TO THREE, ONCOLOGY/CHEMOTHERAPY--ONE TO THREE, INTERMEDIATE CARE UNIT--ONE TO THREE, TELEMETRY--ONE TO THREE, MOTHER/BABY COUPLETS AND NORMAL POST-PARTUM--ONE TO FOUR, PEDIATRICS--ONE TO FOUR, PSYCHIATRIC UNIT--ONE TO FOUR, ADULT MEDICAL-SURGICAL UNIT--ONE TO SIX.

4. THE DEPARTMENT SHALL ADOPT REGULATIONS THAT ESTABLISH MINIMUM, SPECIFIC, NUMERICAL DIRECT-CARE NURSE-TO-PATIENT RATIOS FOR OTHER HEALTHCARE FACILITY NURSING DEPARTMENTS AND UNITS THAT MUST BE INCORPORATED INTO THE STAFFING PLAN.

5. THE MINIMUM NUMBERS OF DIRECT-CARE NURSE-TO-PATIENT STAFF SET FORTH IN THIS SECTION SHALL CONSTITUTE THE MINIMUM NUMBERS OF DIRECT-CARE NURSING STAFF THAT SHALL BE ASSIGNED TO AND BE PRESENT WITHIN A NURSING DEPARTMENT OR UNIT. WHERE THE APPROVED ACUITY SYSTEM ADOPTED BY THE FACILITY INDICATES THAT ADDITIONAL STAFF IS REQUIRED, THE HEALTHCARE FACILITY MUST STAFF AT THE HIGHER STAFFING LEVEL.

6. THE SKILL MIX REFLECTED IN A STAFFING PLAN MUST ASSURE THAT ALL OF THE FOLLOWING ELEMENTS OF THE NURSING PROCESS ARE PERFORMED IN THE PLANNING AND DELIVERY OF CARE FOR EACH PATIENT:

(A) ASSESSMENT, NURSING DIAGNOSIS, PLANNING, INTERVENTION, EVALUATION AND PATIENT ADVOCACY.

(B) REGISTERED NURSES MUST CONSTITUTE AT LEAST FIFTY PERCENT OF THE DIRECT-CARE NURSES INCLUDED IN THE STAFFING PLAN.

(C) THE SKILL MIX MAY NOT INCORPORATE OR ASSUME THAT NURSING CARE FUNCTIONS REQUIRED BY LICENSING LAW OR REGULATIONS OR ACCEPTED STANDARDS OF PRACTICE TO BE PERFORMED BY A LICENSED NURSE ARE TO BE PERFORMED BY UNLICENSED PERSONNEL.

7. THE DEPARTMENT SHALL ADOPT REGULATIONS PRESCRIBING THE METHOD BY WHICH IT WILL APPROVE A HEALTHCARE FACILITY'S ACUITY SYSTEM. SUCH REGULATIONS MAY INCLUDE A SYSTEM FOR CLASS APPROVAL OF ACUITY SYSTEMS.

S 2899-BB. COMPLIANCE WITH PLAN AND RECORDKEEPING. 1. NOTWITHSTANDING ANY LAW TO THE CONTRARY, AS A CONDITION OF LICENSING, A HEALTHCARE FACILITY LICENSED WITHIN THE STATE MUST AT ALL TIMES STAFF IN ACCORDANCE WITH ITS STAFFING PLAN AND THE STAFFING STANDARDS ESTABLISHED PURSUANT TO THIS ARTICLE, PROVIDED, HOWEVER, THAT NOTHING HEREIN SHALL BE DEEMED TO PRECLUDE A HEALTHCARE FACILITY FROM IMPLEMENTING HIGHER DIRECT-CARE NURSE-TO-PATIENT STAFFING LEVELS.

2. NO NURSE SHALL BE ASSIGNED, OR INCLUDED IN THE COUNT OF ASSIGNED NURSING STAFF FOR PURPOSES OF COMPLIANCE WITH MINIMUM STAFFING REQUIREMENTS, IN A NURSING DEPARTMENT OR UNIT OR A CLINICAL AREA WITHIN THE HEALTHCARE FACILITY WITHOUT APPROPRIATE LICENSING, PRIOR ORIENTATION, AND VERIFICATION THAT THE NURSE IS CAPABLE OF PROVIDING COMPETENT NURSING CARE TO THE PATIENTS THEREIN.

3. AS A CONDITION OF LICENSURE, EACH HEALTHCARE FACILITY LICENSED PURSUANT TO THIS ARTICLE SHALL MAINTAIN ACCURATE DAILY RECORDS SHOWING:

(A) THE NUMBER OF PATIENTS ADMITTED, RELEASED AND PRESENT IN EACH NURSING DEPARTMENT OR UNIT WITHIN THE FACILITY.

(B) THE INDIVIDUAL ACUITY LEVEL OF EACH PATIENT PRESENT IN EACH NURSING DEPARTMENT OR UNIT WITHIN THE FACILITY.

(C) THE IDENTITY AND DUTY HOURS OF EACH DIRECT-CARE NURSE IN EACH NURSING DEPARTMENT OR UNIT WITHIN THE FACILITY.

4. NOTWITHSTANDING ANY LAW TO THE CONTRARY, AS A CONDITION OF LICENSURE, EACH HEALTHCARE FACILITY LICENSED WITHIN THE STATE SHALL MAINTAIN DAILY STATISTICS, BY NURSING DEPARTMENT AND UNIT, OF MORTALITY, MORBIDITY, INFECTION, ACCIDENT, INJURY AND MEDICAL ERRORS.

5. ALL RECORDS REQUIRED TO BE KEPT PURSUANT TO THIS SECTION SHALL BE MAINTAINED FOR A PERIOD OF SEVEN YEARS.

6. ALL RECORDS REQUIRED TO BE KEPT PURSUANT TO THIS SECTION SHALL BE MADE AVAILABLE UPON REQUEST TO THE DEPARTMENT AND TO THE PUBLIC, PROVIDED, HOWEVER, THAT INFORMATION RELEASED TO THE PUBLIC SHALL NOT CONTAIN THE NAME OR OTHER PERSONAL IDENTIFYING INFORMATION, APART FROM ACUITY LEVEL, ABOUT ANY INDIVIDUAL PATIENT.

S 2899-CC. MANDATORY OVERTIME AND EXCESSIVE DUTY HOURS. 1. EXCEPT DURING A STATE OF EMERGENCY DECLARED BY THE GOVERNOR, A HEALTHCARE FACILITY MAY NOT MANDATE OR OTHERWISE REQUIRE, DIRECTLY OR INDIRECTLY, A HEALTHCARE EMPLOYEE TO WORK OR BE IN ON-DUTY STATUS IN EXCESS OF ANY ONE OF THE FOLLOWING:

(A) THE SCHEDULED WORK SHIFT OR DUTY PERIOD.

(B) TWELVE HOURS IN A TWENTY-FOUR-HOUR PERIOD.

(C) EIGHTY HOURS IN A CONSECUTIVE FOURTEEN-DAY PERIOD.

"MANDATE" FOR THE PURPOSES OF THIS SUBDIVISION MEANS ANY REQUEST WHICH, IF REFUSED OR DECLINED BY THE HEALTHCARE EMPLOYEE, MAY RESULT IN DISCHARGE, DISCIPLINE, LOSS OF PROMOTION, OR OTHER ADVERSE EMPLOYMENT CONSEQUENCE. NOTHING IN THIS SECTION IS INTENDED TO PROHIBIT A HEALTH-CARE EMPLOYEE FROM VOLUNTARILY WORKING OVERTIME.

2. EXCEPT DURING A STATE OF EMERGENCY DECLARED BY THE GOVERNOR:

(A) NO HEALTHCARE EMPLOYEE MAY WORK OR BE IN ON-DUTY STATUS MORE THAN SIXTEEN HOURS IN ANY TWENTY-FOUR-HOUR PERIOD.

(B) ANY HEALTHCARE EMPLOYEE WORKING SIXTEEN HOURS IN ANY TWENTY-FOUR-HOUR PERIOD MUST HAVE AT LEAST EIGHT CONSECUTIVE HOURS OFF DUTY BEFORE BEING REQUIRED TO RETURN TO DUTY.

(C) NO HEALTHCARE EMPLOYEE MAY BE REQUIRED TO WORK OR BE ON-DUTY MORE THAN SEVEN CONSECUTIVE DAYS WITHOUT AT LEAST ONE CONSECUTIVE TWENTY-FOUR-HOUR PERIOD OFF DUTY WITHIN THAT TIME.

3. A WORK SHIFT SCHEDULE OR OVERTIME PROGRAM ESTABLISHED PURSUANT TO A COLLECTIVE BARGAINING AGREEMENT NEGOTIATED ON BEHALF OF THE HEALTHCARE EMPLOYEES BY A BONA FIDE LABOR ORGANIZATION MAY PROVIDE FOR MANDATORY ON-DUTY HOURS IN EXCESS OF THAT PERMITTED UNDER THIS SECTION, PROVIDED ADEQUATE MEASURES ARE INCLUDED IN THE AGREEMENT TO ENSURE AGAINST EXCES-SIVE FATIGUE ON THE PART OF THE AFFECTED EMPLOYEES.

S 2899-DD. EMPLOYEE RIGHTS. 1. NOTWITHSTANDING ANY LAW TO THE CONTRA-RY, AS A CONDITION OF LICENSURE, EACH HEALTHCARE FACILITY LICENSED WITH-IN THE STATE SHALL ADOPT AND DISSEMINATE TO DIRECT-CARE NURSING STAFF A WRITTEN POLICY THAT COMPLIES WITH THE REQUIREMENTS SET FORTH IN SUBDIVI-SIONS TWO AND THREE OF THIS SECTION, DETAILING THE CIRCUMSTANCES UNDER WHICH A DIRECT-CARE NURSE MAY REFUSE A WORK ASSIGNMENT.

2. AT A MINIMUM, THE WORK ASSIGNMENT POLICY SHALL PERMIT A DIRECT-CARE NURSE TO REFUSE AN ASSIGNMENT FOR WHICH:

(A) THE NURSE IS NOT PREPARED BY EDUCATION, TRAINING OR EXPERIENCE TO SAFELY FULFILL THE ASSIGNMENT WITHOUT COMPROMISING OR JEOPARDIZING PATIENT SAFETY, THE NURSE'S ABILITY TO MEET FORESEEABLE PATIENT NEEDS, OR THE NURSE'S LICENSE.

(B) THE NURSE HAS VOLUNTEERED TO WORK OVERTIME BUT DETERMINES THAT HIS OR HER LEVEL OF FATIGUE AND/OR DECREASED ALERTNESS WOULD COMPROMISE OR JEOPARDIZE PATIENT SAFETY, THE NURSE'S ABILITY TO MEET FORESEEABLE PATIENT NEEDS, OR THE NURSE'S LICENSE.

(C) THE ASSIGNMENT OTHERWISE WOULD VIOLATE REQUIREMENTS ESTABLISHED PURSUANT TO THIS ARTICLE.

3. AT A MINIMUM, THE WORK ASSIGNMENT POLICY SHALL CONTAIN PROCEDURES FOR THE FOLLOWING:

(A) REASONABLE REQUIREMENTS FOR PRIOR NOTICE TO A NURSE'S SUPERVISOR REGARDING THE NURSE'S REQUEST AND SUPPORTING REASONS FOR BEING RELIEVED OF AN ASSIGNMENT OR CONTINUED DUTY.

(B) WHERE FEASIBLE, AN OPPORTUNITY FOR THE SUPERVISOR TO REVIEW THE SPECIFIC CONDITIONS SUPPORTING THE NURSE'S REQUEST, AND TO DECIDE WHETHER TO REMEDY THE CONDITIONS, TO RELIEVE THE NURSE OF THE ASSIGNMENT, OR TO DENY THE NURSE'S REQUEST TO BE RELIEVED OF THE ASSIGNMENT OR CONTINUED DUTY.

(C) A PROCESS WHICH PERMITS THE NURSE TO EXERCISE THE RIGHT TO REFUSE THE ASSIGNMENT OR CONTINUED ON-DUTY STATUS WHEN THE SUPERVISOR DENIES THE REQUEST TO BE RELIEVED IF:

(I) THE SUPERVISOR REJECTS THE REQUEST WITHOUT PROPOSING A REMEDY, OR THE PROPOSED REMEDY WOULD BE INADEQUATE OR UNTIMELY.

(II) THE COMPLAINT AND INVESTIGATION PROCESS WITH THE DEPARTMENT WOULD BE UNTIMELY TO ADDRESS THE CONCERN.

(III) THE EMPLOYEE IN GOOD FAITH BELIEVES THAT THE ASSIGNMENT MEETS CONDITIONS JUSTIFYING REFUSAL.

4. AN EMPLOYEE IS DEEMED TO ACT IN GOOD FAITH IF THE EMPLOYEE REASONABLY BELIEVES THAT THE INFORMATION REPORTED OR DISCLOSED IS TRUE, AND THAT A VIOLATION HAS OCCURRED OR MAY OCCUR. A HEALTHCARE FACILITY COVERED BY THIS ARTICLE SHALL NOT PENALIZE, DISCRIMINATE OR RETALIATE IN ANY MANNER AGAINST AN EMPLOYEE WITH RESPECT TO COMPENSATION, TERMS, CONDITIONS OR PRIVILEGES OF EMPLOYMENT, WHO IN GOOD FAITH, INDIVIDUALLY OR IN CONJUNCTION WITH ANOTHER PERSON OR PERSONS:

(A) REPORTS A VIOLATION OR SUSPECTED VIOLATION OF THIS SECTION TO A PUBLIC REGULATORY AGENCY, A PRIVATE ACCREDITATION BODY, OR MANAGEMENT PERSONNEL OF THE HEALTHCARE FACILITY,

(B) INITIATES, COOPERATES OR OTHERWISE PARTICIPATES IN AN INVESTIGATION OR PROCEEDING BROUGHT BY A REGULATORY AGENCY OR PRIVATE ACCREDITATION BODY CONCERNING MATTERS COVERED BY THIS SECTION,

(C) INFORMS OR DISCUSSES WITH OTHER EMPLOYEES, WITH REPRESENTATIVE OR REPRESENTATIVES OF THE EMPLOYEES, WITH PATIENTS OR PATIENT REPRESENTATIVES, OR WITH THE PUBLIC, VIOLATIONS OR SUSPECTED VIOLATIONS OF THIS SECTION, OR

(D) OTHERWISE AVAILS HIMSELF OR HERSELF OF THE RIGHTS ESTABLISHED PURSUANT TO THIS ARTICLE.

S 2899-EE. ENFORCEMENT. 1. NOTWITHSTANDING ANY RIGHT OF ACTION GRANTED TO ANY GOVERNMENTAL BODY PURSUANT TO THIS ARTICLE, ANY PERSON WHO HAS BEEN INJURED BY REASON OF A VIOLATION OF THIS ARTICLE MAY BRING AN ACTION IN HIS OR HER OWN NAME TO ENJOIN SUCH UNLAWFUL ACT, OR AN ACTION TO RECOVER HIS OR HER ACTUAL DAMAGES, OR BOTH SUCH ACTIONS.

2. THIS ARTICLE SHALL BE ENFORCED BY THE COMMISSIONER, WHO SHALL PROMULGATE SUCH REGULATIONS AS ARE NECESSARY TO IMPLEMENT AND ADMINISTER COMPLIANCE. REGULATIONS SHALL INCLUDE PROCEDURES TO RECEIVE, INVESTIGATE, AND ATTEMPT TO RESOLVE COMPLAINTS, AND BRING ACTIONS IN ANY COURT OF COMPETENT JURISDICTION TO RECOVER APPROPRIATE RELIEF FOR AGGRIEVED EMPLOYEES.

3. NO HEALTHCARE FACILITY SHALL DISCHARGE, DEMOTE, HARASS OR OTHERWISE TAKE ADVERSE ACTIONS AGAINST ANY INDIVIDUAL BECAUSE SUCH INDIVIDUAL SEEKS TO ENFORCE THIS ARTICLE, OR TESTIFIES, ASSISTS OR PARTICIPATES IN ANY MANNER IN AN INVESTIGATION, HEARING OR OTHER PROCEEDING TO ENFORCE THIS ARTICLE.

4. IN ANY ACTION UNDER THIS ARTICLE IN WHICH AN EMPLOYEE PREVAILS:

(A) THE EMPLOYEE SHALL BE AWARDED MONETARY RELIEF, INCLUDING BACK PAY IN AN AMOUNT EQUAL TO THE DIFFERENCE BETWEEN THE EMPLOYEE'S ACTUAL EARNINGS AND WHAT THE EMPLOYEE WOULD HAVE EARNED BUT FOR THE HEALTHCARE FACILITY'S UNLAWFUL PRACTICES, AND AN ADDITIONAL AMOUNT IN PUNITIVE DAMAGES, AS APPROPRIATE.

(B) THE HEALTHCARE FACILITY SHALL BE ENJOINED FROM CONTINUING TO VIOLATE THE PROVISIONS OF THIS ARTICLE AND MAY BE ORDERED TO TAKE SUCH ADDITIONAL AFFIRMATIVE STEPS AS ARE NECESSARY TO ENSURE AN END TO THE UNLAWFUL PRACTICES.

(C) THE HEALTHCARE FACILITY SHALL PAY A REASONABLE ATTORNEY'S FEE, REASONABLE EXPERT WITNESS FEES, AND OTHER COSTS OF THE ACTION.

S 4. This act shall take effect on the first of July next succeeding the date on which it shall have become a law.