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

8771

I N A S S E M B L Y

February 12, 2014

Introduced by M. of A. GUNTHER -- read once and referred to the Committee on Health

AN ACT to amend the public health law and the insurance law, in relation to safe patient handling programs in health care facilities

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 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

SECTION 2997-G. LEGISLATIVE INTENT.

2997-H. DEFINITIONS.

2997-I. SAFE PATIENT HANDLING COMMITTEES; PROGRAMS.

S 2997-G. LEGISLATIVE INTENT. THE LEGISLATURE HEREBY FINDS AND DECLARES THAT IT IS IN THE PUBLIC INTEREST FOR HEALTH CARE FACILITIES TO IMPLEMENT SAFE PATIENT HANDLING POLICIES. 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 INJURY. CAREGIVERS ALSO 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 MAY REALIZE A 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. WASHINGTON STATE WAS ONE OF THE FIRST STATES TO PASS SAFE PATIENT HANDLING LEGISLATION IN TWO THOUSAND SIX, WITH THE STRONG SUPPORT OF NURSING UNIONS AND THE WASHINGTON HOSPITAL ASSOCIATION. SINCE THEN, WASHINGTON STATE HAS REPORTED A DECREASE IN PATIENT HANDLING-RELATED INJURIES. IT IS THE INTENT OF THE LEGISLATURE TO CREATE A SIMILAR PROGRAM IN THIS STATE WITHOUT PLACING AN UNDUE FINANCIAL BURDEN ON HEALTH CARE FACILITIES.

S 2997-H. DEFINITIONS. FOR THE PURPOSES OF THIS TITLE:

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

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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 OR TWENTY-EIGHT-A OF THIS CHAPTER, OR THE MENTAL HYGIENE LAW, THE EDUCATION LAW, ARTICLE NINETEEN-G OF THE EXECUTIVE 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 WHO IS RESPONSIBLE FOR PATIENT HANDLING OR PATIENT ASSESSMENT AS A REGULAR OR INCIDENTAL PART OF HIS OR HER 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. "LIFT TEAM" SHALL MEAN HEALTH CARE FACILITY EMPLOYEES SPECIALLY TRAINED TO CONDUCT PATIENT LIFTS, TRANSFERS AND REPOSITIONING USING LIFTING EQUIPMENT WHEN APPROPRIATE.

6. "SAFE PATIENT HANDLING" SHALL MEAN THE USE OF ENGINEERING CONTROLS, LIFTING AND TRANSFER AIDS, OR ASSISTIVE DEVICES BY LIFT TEAMS OR OTHER STAFF, INSTEAD OF MANUAL LIFTING TO PERFORM THE ACTS OF LIFTING, TRANSFERRING AND REPOSITIONING HEALTH CARE PATIENTS AND RESIDENTS.

7. "MUSCULOSKELETAL DISORDERS" SHALL MEAN CONDITIONS THAT INVOLVE THE NERVES, TENDONS, MUSCLES AND SUPPORTING STRUCTURES OF THE BODY.

S 2997-I. SAFE PATIENT HANDLING COMMITTEES; PROGRAMS. 1. ON OR BEFORE FEBRUARY FIRST, TWO THOUSAND FIFTEEN, EACH HEALTH CARE FACILITY SHALL ESTABLISH A SAFE PATIENT HANDLING COMMITTEE EITHER BY CREATING A NEW COMMITTEE OR ASSIGNING THE FUNCTIONS OF A SAFE PATIENT HANDLING COMMITTEE TO AN EXISTING COMMITTEE. THE PURPOSE OF A COMMITTEE IS TO DESIGN AND RECOMMEND THE PROCESS FOR IMPLEMENTING A SAFE PATIENT HANDLING PROGRAM. AT LEAST ONE-HALF OF THE MEMBERS OF THE SAFE PATIENT HANDLING COMMITTEE SHALL BE FRONTLINE MANAGERIAL EMPLOYEES WHO PROVIDE DIRECT CARE TO PATIENTS UNLESS DOING SO WILL ADVERSELY AFFECT PATIENT CARE.

2. ON OR BEFORE DECEMBER FIRST, TWO THOUSAND FIFTEEN, EACH HEALTH CARE FACILITY SHALL ESTABLISH A SAFE PATIENT HANDLING PROGRAM. AS PART OF THIS PROGRAM, A HEALTH CARE FACILITY SHALL:

(A) IMPLEMENT A SAFE PATIENT HANDLING POLICY FOR ALL SHIFTS AND UNITS OF THE HEALTH CARE FACILITY. IMPLEMENTATION OF THE SAFE PATIENT HANDLING POLICY MAY BE PHASED-IN WITH THE ACQUISITION OF EQUIPMENT PURSUANT TO SUBDIVISION THREE OF THIS SECTION;

(B) CONDUCT A PATIENT HANDLING HAZARD ASSESSMENT. THIS ASSESSMENT SHOULD CONSIDER SUCH VARIABLES AS PATIENT-HANDLING TASKS, TYPES OF NURSING UNITS, PATIENT POPULATIONS AND THE PHYSICAL ENVIRONMENT OF PATIENT CARE AREAS;

(C) DEVELOP A PROCESS TO IDENTIFY THE APPROPRIATE USE OF THE SAFE PATIENT HANDLING POLICY BASED ON THE PATIENT'S PHYSICAL AND MEDICAL CONDITION AND THE AVAILABILITY OF LIFTING EQUIPMENT OR LIFT TEAMS. THE POLICY SHALL INCLUDE A MEANS TO ADDRESS CIRCUMSTANCES UNDER WHICH IT WOULD BE MEDICALLY CONTRAINDICATED TO USE LIFTING OR TRANSFER AIDS OR ASSISTIVE DEVICES FOR PARTICULAR PATIENTS;

(D) CONDUCT AN ANNUAL PERFORMANCE EVALUATION OF THE PROGRAM TO DETERMINE ITS EFFECTIVENESS, WITH THE RESULTS OF THE EVALUATION REPORTED TO THE SAFE PATIENT HANDLING COMMITTEE. THE EVALUATION SHALL DETERMINE THE EXTENT TO WHICH IMPLEMENTATION OF THE PROGRAM HAS RESULTED IN A REDUCTION IN MUSCULOSKELETAL DISORDER CLAIMS AND DAYS OF LOST WORK ATTRIBUTABLE TO MUSCULOSKELETAL DISORDERS CAUSED BY PATIENT HANDLING, AND INCLUDE RECOMMENDATIONS TO INCREASE THE PROGRAM'S EFFECTIVENESS; AND

(E) WHEN DEVELOPING ARCHITECTURAL PLANS FOR CONSTRUCTING OR REMODELING A HEALTH CARE FACILITY OR A UNIT OF A HEALTH CARE FACILITY IN WHICH PATIENT HANDLING AND MOVEMENT OCCURS, CONSIDER THE FEASIBILITY OF INCORPORATING PATIENT HANDLING EQUIPMENT OR THE PHYSICAL SPACE AND CONSTRUCTION DESIGN NEEDED TO INCORPORATE THAT EQUIPMENT AT A LATER DATE.

3. ON OR BEFORE JANUARY THIRTIETH, TWO THOUSAND EIGHTEEN, EACH HEALTH CARE FACILITY SHALL COMPLETE, AT A MINIMUM, ACQUISITION OF ITS CHOICE OF: (A) ONE READILY AVAILABLE LIFT PER ACUTE CARE UNIT ON THE SAME FLOOR, UNLESS THE SAFE PATIENT HANDLING COMMITTEE DETERMINES A LIFT IS UNNECESSARY IN THE UNIT; (B) ONE LIFT FOR EVERY TEN ACUTE CARE AVAILABLE INPATIENT BEDS; OR (C) EQUIPMENT FOR USE BY LIFT TEAMS. HEALTH CARE FACILITIES SHALL TRAIN THEIR STAFFS ON POLICIES, EQUIPMENT AND DEVICES AT LEAST ANNUALLY.

4. NOTHING IN THIS SECTION PRECLUDES LIFT TEAM MEMBERS FROM PERFORMING OTHER DUTIES AS ASSIGNED DURING THEIR SHIFT.

5. A HEALTH CARE FACILITY SHALL DEVELOP PROCEDURES FOR EMPLOYEES TO REFUSE TO PERFORM OR BE INVOLVED IN PATIENT HANDLING OR MOVEMENT THAT THE EMPLOYEE BELIEVES IN GOOD FAITH WILL EXPOSE A PATIENT OR HEALTH CARE FACILITY EMPLOYEE TO AN UNACCEPTABLE RISK OF INJURY. A HEALTH CARE FACILITY EMPLOYEE WHO IN GOOD FAITH FOLLOWS THE PROCEDURE DEVELOPED BY THE HEALTH CARE FACILITY IN ACCORDANCE WITH THIS SUBSECTION SHALL NOT BE THE SUBJECT OF DISCIPLINARY ACTION BY THE HEALTH CARE FACILITY FOR THE REFUSAL TO PERFORM OR BE INVOLVED IN THE PATIENT HANDLING OR MOVEMENT.

S 3. The activities enumerated in title 1-A of article 29-D of the public health law, as added by section two of this act, shall be undertaken pursuant to section 2805-j of the public health law by a covered health care provider and shall be deemed activities of such program as described in such section and any and all information attributable to such activities shall be subject to provisions of section 2805-m of the public health law and section 6527 of the education law.

S 4. Section 2304 of the insurance law is amended by adding a new subsection (j) to read as follows:

(J)(1) ON OR BEFORE JANUARY FIRST, TWO THOUSAND FIFTEEN, THE DEPARTMENT SHALL DEVELOP RULES TO PROVIDE A REDUCED WORKER'S COMPENSATION RATE FOR HEALTH CARE FACILITIES THAT IMPLEMENT A SAFE PATIENT HANDLING PROGRAM PURSUANT TO TITLE ONE-A OF ARTICLE TWENTY-NINE-D OF THE PUBLIC HEALTH LAW. SUCH RULES SHALL INCLUDE ANY REQUIREMENTS FOR OBTAINING THE REDUCED RATE THAT MUST BE MET BY HEALTH CARE FACILITIES.

(2) THE DEPARTMENT SHALL COMPLETE AN EVALUATION OF THE RESULTS OF THE REDUCED RATE, INCLUDING CHANGES IN CLAIM FREQUENCY AND COSTS, AND SHALL REPORT TO THE APPROPRIATE COMMITTEES OF THE LEGISLATURE ON OR BEFORE DECEMBER FIRST, TWO THOUSAND EIGHTEEN AND AGAIN ON OR BEFORE DECEMBER FIRST, TWO THOUSAND TWENTY.

S 5. (a) For the period January 1, 2015 through December 30, 2018, a hospital may take a credit against the assessment due under subdivision 18 of section 2807-c of the public health law for the cost of purchasing mechanical lifting devices and other equipment that are primarily used to minimize patient handling by health care providers, consistent with a

safe patient handling program developed and implemented by the hospital in compliance with section two of this act. The credit is equal to one hundred percent of the cost of the mechanical lifting devices or other equipment.

(b) For the period January 1, 2015 through December 30, 2018, a residential health care facility may take a credit against an assessment due under paragraph (b) of subdivision 2 of section 2807-d of the public health law for the cost of purchasing mechanical lifting devices and other equipment that are primarily used to minimize patient handling by health care providers, consistent with a safe patient handling program developed and implemented by the residential health care facility in compliance with section two of this act. The credit is equal to one hundred percent of the cost of the mechanical lifting devices or other equipment.

(c) No application is necessary for a credit claimed pursuant to this section; however, a health care facility taking a credit under this section must maintain records, as required by the commissioner of health, necessary to verify eligibility for the credit under this section. A credit earned during one calendar year may be carried over to be credited against assessments due in a subsequent calendar year. No refunds shall be granted for credits under this section.

(d) The maximum credit that may be earned under this section for each health care facility is limited to one thousand dollars for each staffed inpatient bed.

(e) Credits are available on a first in-time basis. The commissioner of health shall disallow any credits, or portion thereof, that would cause the total amount of credits claimed statewide under this section to exceed one thousand dollars multiplied by the number of acute inpatient hospital beds and residential health care facility beds in the state. If the limitation is reached, the commissioner of health shall notify health care facilities that the annual statewide limit has been met. In addition, the commissioner of health shall provide written notice to any health care facility that has claimed tax credits after the limitation has been met. The notice shall indicate the amount of tax due and shall provide that the tax be paid within thirty days from the date of such notice. Such commissioner shall not assess penalties and interest on the amount due in the initial notice if the amount due is paid by the due date specified in the notice, or any extension thereof.

(f) Credit shall not be claimed under this section for the acquisition of mechanical lifting devices and other equipment if the acquisition occurred before the effective date of this act.

(g) Credit shall not be claimed under this section for any acquisition of mechanical lifting devices and other equipment that occurs after December 31, 2018.

(h) The commissioner of health shall issue an annual report on the amount of credits claimed by health care facilities under this section, with the first report due on July 1, 2016.

S 6. This act shall take effect immediately.