

1 LEADING TO INCREASED MORALE, IMPROVED JOB SATISFACTION AND LONGEVITY IN
2 THE PROFESSION. HEALTH CARE FACILITIES REALIZE A QUICK RETURN ON THEIR
3 INVESTMENT THROUGH REDUCED WORKERS' COMPENSATION MEDICAL AND INDEMNITY
4 COSTS, REDUCED LOST WORKDAYS AND IMPROVED RECRUITMENT AND RETENTION OF
5 CAREGIVERS. ALL OF THIS WILL LEAD TO FISCAL IMPROVEMENT IN HEALTH CARE
6 IN NEW YORK STATE.

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

8 1. "HEALTH CARE FACILITY" SHALL MEAN ANY INDIVIDUAL, PARTNERSHIP,
9 ASSOCIATION, CORPORATION, LIMITED LIABILITY COMPANY OR ANY PERSON OR
10 GROUP OF PERSONS ACTING DIRECTLY OR INDIRECTLY ON BEHALF OF OR IN THE
11 INTEREST OF AN EMPLOYER THAT PROVIDES HEALTH CARE SERVICES IN A FACILITY
12 LICENSED OR OPERATED PURSUANT TO ARTICLE TWENTY-EIGHT, TWENTY-EIGHT-A OF
13 THIS CHAPTER, OR THE MENTAL HYGIENE LAW, ARTICLE EIGHT OR TITLE EIGHT OF
14 THE EDUCATION LAW, ARTICLE NINETEEN-G OF THE EXECUTIVE LAW OR THE
15 CORRECTION LAW, INCLUDING ANY FACILITY OPERATED BY THE STATE OR A PUBLIC
16 BENEFIT CORPORATION AS DEFINED BY SECTION SIXTY-SIX OF THE GENERAL
17 CONSTRUCTION LAW; PROVIDED THAT THE PROVISIONS OF THIS TITLE SHALL NOT
18 APPLY TO ANY FACILITY OPERATED OR FUNDED BY ANY MUNICIPAL CORPORATION,
19 AS DEFINED IN SECTION TWO OF THE GENERAL MUNICIPAL LAW, EXCEPT THAT
20 SUCH PROVISIONS SHALL APPLY TO FACILITIES LICENSED OR OPERATED BY ANY
21 POLITICAL SUBDIVISION OF THE STATE PURSUANT TO ARTICLE TWENTY-EIGHT OR
22 TWENTY-EIGHT-A OF THIS CHAPTER.

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

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

30 4. "EMPLOYEE REPRESENTATIVE" SHALL MEAN THE RECOGNIZED OR CERTIFIED
31 COLLECTIVE BARGAINING AGENT FOR NURSES OR DIRECT CARE WORKERS OF A
32 HEALTH CARE FACILITY.

33 5. "SAFE PATIENT HANDLING" SHALL MEAN THE USE OF ENGINEERING CONTROLS,
34 LIFTING AND TRANSFER AIDS, OR ASSISTIVE DEVICES, BY NURSES OR DIRECT
35 CARE WORKERS TRANSFERRING AND REPOSITIONING OF HEALTH CARE PATIENTS AND
36 RESIDENTS IN HEALTH CARE FACILITIES.

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

38 (I) A WRITTEN POLICY STATEMENT; AND

39 (II) MANAGEMENT COMMITMENT AND EMPLOYEE INVOLVEMENT; AND

40 (III) COMMITTEES; AND

41 (IV) A FACILITY SAFE PATIENT HANDLING PROGRAM.

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

43 (I) RISK ASSESSMENTS; AND

44 (II) INCIDENT INVESTIGATION; AND

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

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

49 (V) PROGRAM EVALUATION AND MODIFICATION.

50 S 2997-I. STATEWIDE SAFE PATIENT HANDLING WORK GROUP. 1. A STATEWIDE
51 SAFE PATIENT HANDLING WORK GROUP IS HEREBY CREATED WITHIN THE DEPART-
52 MENT. SUCH WORK GROUP SHALL CONSIST OF, AT MINIMUM, THE COMMISSIONER OR
53 HIS OR HER DESIGNEE; THE COMMISSIONER OF LABOR OR HIS OR HER DESIGNEE;
54 REPRESENTATIVES OF HEALTH CARE ORGANIZATIONS, REPRESENTATIVES FROM
55 EMPLOYEE ORGANIZATIONS REPRESENTING NURSES AND REPRESENTATIVES FROM
56 EMPLOYEE ORGANIZATIONS REPRESENTING DIRECT CARE WORKERS; REPRESENTATIVES

1 WHO ARE CERTIFIED ERGONOMIST EVALUATION SPECIALISTS AND REPRESENTATIVES
2 WHO HAVE EXPERIENCE IN OCCUPATIONAL HEALTH AND SAFETY.

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

6 3. THE WORK GROUP SHALL BE ESTABLISHED NO LATER THAN JANUARY FIRST,
7 TWO THOUSAND FOURTEEN.

8 4. THE WORK GROUP SHALL:

9 (A) PREPARE A STATEWIDE POLICY STATEMENT OUTLINING THE REQUIREMENT OF
10 A COMPREHENSIVE SAFE PATIENT HANDLING PROGRAM TO BE IMPLEMENTED AT ALL
11 HEALTH CARE FACILITIES, AS DEFINED IN SUBDIVISION ONE OF SECTION TWEN-
12 TY-NINE HUNDRED NINETY-SEVEN-H OF THIS TITLE. THE POLICY STATEMENT
13 SHALL OUTLINE THE REQUIREMENTS FOR DEVELOPING AND IMPLEMENTING A SAFE
14 PATIENT HANDLING PROGRAM THAT MUST INCLUDE ALL ELEMENTS SPECIFIED IN
15 SUBDIVISION SIX OF SECTION TWENTY-NINE HUNDRED NINETY-SEVEN-H OF THIS
16 TITLE;

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

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

22 (D) IDENTIFY OR DEVELOP TRAINING MATERIALS AND PROCEDURES WITH REGARD
23 TO THE EQUIPMENT OR TECHNOLOGY RECOMMENDED BY THE STATEWIDE POLICY;

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

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

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

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

33 (I) SUBMIT A REPORT TO THE COMMISSIONER BY JULY FIRST, TWO THOUSAND
34 FOURTEEN IDENTIFYING SAFE PATIENT HANDLING PROGRAM ELEMENTS AND RECOM-
35 MENDATIONS OF SAFE PATIENT LIFTING EQUIPMENT, TECHNIQUES OR DEVICES.

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

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

44 2. THE STATEWIDE SAFE PATIENT HANDLING POLICY SHALL INCLUDE RECOMMEN-
45 DATIONS REGARDING THE APPROPRIATE UTILIZATION OF SAFE PATIENT HANDLING
46 EQUIPMENT AND STRATEGIES; AND TO FACILITATE PATIENTS AND RESIDENTS
47 REACHING THE HIGHEST PRACTICAL FUNCTIONAL LEVEL WHILE SIMULTANEOUSLY
48 PROVIDING FOR THE SAFETY OF THE PATIENTS AND THE HEALTH CARE WORKER. THE
49 STATEWIDE SAFE PATIENT HANDLING POLICY SHALL INCLUDE RECOMMENDED STAND-
50 ARDS WITH REGARD TO:

51 (A) THE EQUIPMENT, DEVICES OR TECHNOLOGY TO BE CONSIDERED BY THE
52 HEALTH CARE FACILITIES' SAFE PATIENT HANDLING COMMITTEES, PURSUANT TO
53 SUBDIVISION TWO OF SECTION TWENTY-NINE HUNDRED NINETY-SEVEN-K OF THIS
54 TITLE, AND THEIR USE BY A NURSE OR DIRECT CARE WORKER WHO IS ENGAGED IN
55 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 SIXTEEN. HOWEVER, EACH NURSING HOME AS DEFINED IN ARTICLE TWENTY-EIGHT-A OF THIS CHAPTER SHALL FILE WITH THE DEPARTMENT BY JULY FIRST, TWO THOUSAND SIXTEEN A DETAILED PLAN TO COMPLY WITH THIS TITLE. THE DEPARTMENT SHALL ACCEPT SUCH PLAN BY JULY FIRST, TWO THOUSAND SEVENTEEN.

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) ESTABLISH PROCEDURES 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, 2013.