

STATE OF NEW YORK

7425

IN SENATE

January 17, 2018

Introduced by Sen. FUNKE -- 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 implementing a "safe staffing for quality care demonstration program"; and providing for the repeal of such provisions upon expiration thereof

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. The public health law is amended by adding six new
2 sections 2827, 2828, 2829, 2830, 2831 and 2832 to read as follows:

3 § 2827. The department shall facilitate a safe staffing demonstration
4 program in accordance with section twenty-eight hundred thirty of this
5 article. Such program shall consist of a maximum of three acute care
6 facilities located in three different empire state development zones as
7 established in article eighteen-B of the economic development law. Two
8 of the zones shall be located in upstate and one in downstate. The
9 department shall develop criteria and an application process for partic-
10 ipation in the demonstration program. Participation in the program by
11 facilities shall be voluntary. Any costs incurred by selected applicants
12 shall be reimbursed by the state.

13 § 2828. Safe staffing; definitions. The following words and phrases,
14 as used in this article, shall have the following meanings unless the
15 context otherwise plainly requires:

16 1. "Acute care facility" shall mean a hospital other than a residen-
17 tial health care facility and shall also include any facility that
18 provides health care services pursuant to the mental hygiene law, arti-
19 cle nineteen-G of the executive law or the correction law if such facil-
20 ity is operated by the state or a political subdivision of the state or
21 a public authority or public benefit corporation.

22 2. "Acuity system" shall mean an established measurement instrument
23 which (a) predicts nursing care requirements for individual patients
24 based on severity of patient illness, need for specialized equipment and
25 technology, intensity of nursing interventions required, and the
26 complexity of clinical nursing judgment needed to design, implement and
27 evaluate the patient's nursing care plan; (b) details the amount of

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

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1 nursing care needed, both in number of direct-care nurses and in skill
2 mix of nursing personnel required, on a daily basis, for each patient in
3 a nursing department or unit; and (c) is stated in terms that readily
4 can be used and understood by direct-care nurses. The acuity system
5 shall take into consideration the patient care services provided not
6 only by registered professional nurses but also by licensed practical
7 nurses, social workers and other health care personnel.

8 3. "Assessment tool" shall mean a measurement system that compares the
9 staffing level in each nursing department or unit against actual patient
10 nursing care requirements in order to review the accuracy of an acuity
11 system.

12 4. "Direct-care nurse" and "direct-care nursing staff" shall mean any
13 nurse who has principal responsibility to oversee or carry out medical
14 regimens, nursing or other bedside care for one or more patients.

15 5. "Documented staffing plan" shall mean a detailed written plan
16 setting forth the minimum number and classification of direct-care nurs-
17 es required in each nursing department or unit in an acute care facility
18 for a given year, based on reasonable projections derived from the
19 patient census and average acuity level within each department or unit
20 during the prior year, the department or unit size and geography, the
21 nature of services provided and any foreseeable changes in department or
22 unit size or function during the current year.

23 6. "Nurse" shall mean a registered professional nurse or licensed
24 practical nurse licensed pursuant to article one hundred thirty-nine of
25 the education law.

26 7. "Nursing care" shall mean that care which is within the definition
27 of the practice of nursing pursuant to section sixty-nine hundred two of
28 the education law, or otherwise encompassed with the recognized stand-
29 ards of nursing practice, including assessment, nursing diagnosis, plan-
30 ning, intervention, evaluation and patient advocacy.

31 8. "Safe staffing requirements" shall mean the provisions of this
32 section and sections twenty-eight hundred twenty-nine, twenty-eight
33 hundred thirty, twenty-eight hundred thirty-one and twenty-eight hundred
34 thirty-two of this article and all rules and regulations adopted pursu-
35 ant thereto.

36 9. "Skill mix" shall mean the differences in licensing, specialty and
37 experience among direct-care nurses.

38 10. "Staffing level" shall mean the actual numerical nurse to patient
39 ratio within a nursing department or unit.

40 11. "Unit" shall mean a patient care component, as defined by the
41 department, within an acute care facility.

42 12. "Non-nursing direct-care staff" shall mean any employee who is not
43 a nurse or other person licensed, certified or registered under title
44 eight of the education law whose principal responsibility is to carry
45 out patient care for one or more patients or provides direct assistance
46 in the delivery of patient care.

47 § 2829. Commissioner and council; powers and duties. 1. The commis-
48 sioner shall appoint an acute care facility council consisting of thir-
49 teen members. No less than seven members shall be registered profes-
50 sional nurses, three of whom shall be direct care registered nurses,
51 three of whom shall be nurse managers and one of whom shall be a nurse
52 administrator. No less than two members of the acute care facility coun-
53 cil shall be representatives of recognized or certified collective
54 bargaining agents of non-nursing direct care staff. There shall be at
55 least two representatives of acute care facilities, one representative

1 of a nursing professional association, and one representative of a
2 recognized or certified bargaining agent of nurses.

3 2. The acute care facility council shall advise the commissioner in
4 the development of registered professional nurse to patient staffing
5 requirements and non-nursing direct-care staff to patient ratios that
6 are not otherwise specified in this article; the efficacy of acuity
7 systems submitted for approval by the commissioner; the development of
8 an assessment tool used to evaluate the efficacy of acuity systems; and
9 review and make recommendations on approval of staffing plans to be used
10 by facilities selected for participation in the demonstration program.

11 § 2830. Staffing requirements; demonstration program. 1. Staffing
12 requirements. Each participating acute care facility shall ensure that
13 it is staffed in a manner that provides sufficient, appropriately quali-
14 fied direct-care nurses in each department or unit within such facility
15 in order to meet the individualized care needs of the patients therein.
16 At a minimum, each such facility shall meet the requirements of subdivi-
17 sions two and three of this section.

18 2. Staffing plan. Each participating acute care facility shall submit
19 to the department a documented staffing plan and a written certification
20 that the submitted staffing plan is sufficient to provide adequate and
21 appropriate delivery of health care services to patients for the ensuing
22 year. The documented staffing plan shall:

23 (a) meet the minimum requirements set forth in subdivision three of
24 this section;

25 (b) be adequate to meet any additional requirements provided by other
26 laws, rules or regulations;

27 (c) employ and identify an acuity system for addressing fluctuations
28 in actual patient acuity levels and nursing care requirements requiring
29 increased staffing levels above the minimums set forth in the plan;

30 (d) factor in other unit or department activity such as discharges,
31 transfers and admissions, staff breaks, meals, routine and expected
32 absences from the unit and administrative and support tasks that are
33 expected to be done by direct-care nurses in addition to direct nursing
34 care;

35 (e) include a plan to meet necessary staffing levels and services
36 provided by non-nursing direct-care staff in meeting patient care needs
37 pursuant to subdivision one of this section; provided, however, that the
38 staffing plan shall not incorporate or assume that nursing care func-
39 tions required by laws, rules or regulations, or accepted standards of
40 practice to be performed by a registered professional nurse are to be
41 performed by other personnel;

42 (f) identify the system that will be used to document actual staffing
43 on a daily basis within each department or unit;

44 (g) include a written assessment of the accuracy of the prior year's
45 staffing plan in light of actual staffing needs;

46 (h) identify each nurse staff classification referenced in such plan
47 together with a statement setting forth minimum qualifications for each
48 such classification; and

49 (i) be developed in consultation with a majority of the direct-care
50 nurses within each department or unit or, where such nurses are repres-
51 ented, with the applicable recognized or certified collective bargaining
52 representative or representatives of the direct-care nurses and of other
53 supportive and assistive staff.

54 3. Minimum staffing requirements. (a) The documented staffing plan
55 shall incorporate, at a minimum, the following direct-care nurse-to-pa-
56 tient ratios:

1 (i) one nurse to one patient: operating room and trauma emergency
2 units and maternal/child care units for the second or third stage of
3 labor;

4 (ii) one nurse to two patients: maternal/child care units for the
5 first stage of labor, and all critical care areas including emergency
6 critical care and all intensive care units and postanesthesia units;

7 (iii) one nurse to three patients: antepartum, emergency room, pedia-
8 trics, step-down and telemetry units and units for newborns and interme-
9 diante care nursery units;

10 (iv) one nurse to three patients: postpartum mother/baby couplets
11 (maximum six patients per nurse);

12 (v) one nurse to four patients: non-critical antepartum patients,
13 postpartum mother only units and medical/surgical and acute care psychi-
14 atric units;

15 (vi) one nurse to five patients: rehabilitation units and subacute
16 patients; and

17 (vii) one nurse to six patients: well-baby nursery units.

18 For any units not listed in this paragraph, including, but not limited
19 to, psychiatric units, and acute care facilities operated pursuant to
20 the mental hygiene law or the correction law, the department shall
21 establish by regulation the appropriate direct-care nurse-to-patient
22 ratio.

23 (b) The nurse-to-patient ratios set forth in paragraph (a) of this
24 subdivision shall reflect the maximum number of patients that may be
25 assigned to each direct-care nurse in a unit at any one time.

26 (c) There shall be no averaging of the number of patients and the
27 total number of nurses on the unit during any one shift nor over any
28 period of time.

29 (d) The commissioner, in consultation with the acute care facility
30 council, shall establish guidelines providing for the maintenance of
31 minimum nurse-to-patient ratios, as set forth in this section, including
32 during routine or expected absences from the unit, such as meals or
33 breaks.

34 4. Licensed practical nurses. In any situation in which licensed prac-
35 tical nurses are included in the documented staffing plan, any patients
36 assigned to the licensed practical nurse shall also be included in
37 calculating the number of patients assigned to any registered profes-
38 sional nurse who is required by law, rule, regulation, contract or prac-
39 tice to supervise or oversee the direct-nursing care provided by the
40 licensed practical nurse.

41 5. Skill mix. The skill mix shall not incorporate or assume that nurs-
42 ing care functions required by section sixty-nine hundred two of the
43 education law or accepted standards of practice to be performed by a
44 registered professional nurse are to be performed by a licensed practi-
45 cal nurse or unlicensed assistive personnel, or that nursing care func-
46 tions required by section sixty-nine hundred two of the education law or
47 accepted standards of practice to be performed by a licensed practical
48 nurse are to be performed by unlicensed assistive personnel.

49 6. Adjustments by facility. The minimum staffing requirement and
50 nurse-to-patient ratio set forth in this section shall be adjusted by
51 each participating acute care facility as necessary to reflect the need
52 for additional direct-care nurses. Additional staff shall be assigned
53 in accordance with the approved, facility-specific patient acuity system
54 for determining nursing care requirements, including the severity of the
55 illness, the need for specialized equipment and technology, the complex-
56 ity of clinical judgment needed to design, implement and evaluate the

1 patient care plan and the ability for self-care, and the licensure of
2 the personnel required for care.

3 7. Nothing contained in this section shall supersede or diminish the
4 terms of a collective bargaining agreement that provides for staffing
5 ratios that exceed the ratios established under this section.

6 § 2831. Compliance with staffing plan and recordkeeping. 1. Each
7 participating acute care facility shall at all times staff in accordance
8 with its documented staffing plan and the staffing standards set forth
9 in section twenty-eight hundred thirty of this article; provided, howev-
10 er, that nothing in this section shall be deemed to preclude any such
11 facility from implementing higher direct-care nurse-to-patient staffing
12 levels, nor shall the requirements set forth in such section twenty-
13 eight hundred thirty of this article be deemed to supersede or replace
14 any higher requirements otherwise mandated by law, regulation or
15 contract.

16 2. For purposes of compliance with the minimum staffing requirements
17 standards set forth in section twenty-eight hundred thirty of this arti-
18 cle, no nurse shall be assigned, or included in the nurse-to-patient
19 ratio count in a nursing unit or a clinical area within an acute care
20 facility unless that nurse has an appropriate license pursuant to arti-
21 cle one hundred thirty-nine of the education law, has received prior
22 orientation in that clinical area sufficient to provide competent nurs-
23 ing care to the patients in that unit or clinical area, and has demon-
24 strated current competence in providing care in that unit or clinical
25 area. Participating acute care facilities that utilize temporary nursing
26 agencies shall have and adhere to a written procedure to orient and
27 evaluate personnel from such sources to ensure adequate orientation and
28 competency prior to inclusion in the nurse-to-patient ratio. In the
29 event of an emergency staffing situation in which insufficient staffing
30 may lead to unsafe patient care, nurses may be temporarily assigned to a
31 different unit or clinical area, provided that such nurses shall be
32 assigned patients appropriate to their skill and competency level. The
33 facility shall establish a consistent plan for addressing emergency
34 staffing situations and monitor outcomes. Emergencies are defined as
35 natural disasters, declared emergencies, mass casualty incidents or
36 other events not reasonably anticipated and planned for and not regular-
37 ly occurring within the facility.

38 3. Each participating acute care facility shall maintain accurate
39 daily records showing:

40 (a) the number of patients admitted, released and present in each
41 nursing department or unit within such facility;

42 (b) the individual acuity level of each patient present in each nurs-
43 ing department or unit within such facility; and

44 (c) the identity and duty hours of each direct-care nurse in each
45 nursing department or unit within such facility.

46 4. Each participating acute care facility shall maintain daily statis-
47 tics, by nursing department and unit, of mortality, morbidity,
48 infection, accident, injury and medical errors.

49 § 2832. Work assignment policy. 1. General. Each participating acute
50 care facility shall adopt, disseminate to direct-care nurses and comply
51 with a written work assignment policy, that meets the requirements of
52 subdivisions two and three of this section, detailing the circumstances
53 under which a direct-care nurse may refuse a work assignment.

54 2. Minimum conditions. At a minimum, the work assignment policy shall
55 permit a direct-care nurse to refuse an assignment:

1 (a) for which the nurse is not prepared by education, training or
2 experience to safely fulfill the assignment without compromising or
3 jeopardizing patient safety, the nurse's ability to meet foreseeable
4 patient needs or the nurse's license; or

5 (b) would otherwise violate the safe staffing requirements.

6 3. Minimum procedures. At a minimum, the work assignment policy shall
7 contain procedures for the following:

8 (a) reasonable requirements for prior notice to the nurse's supervisor
9 regarding the nurse's request and supporting reasons for being relieved
10 of an assignment or continued duty;

11 (b) where feasible, an opportunity for the supervisor to review the
12 specific conditions supporting the nurse's request, and to decide wheth-
13 er to remedy the conditions, to relieve the nurse of the assignment, or
14 to deny the nurse's request to be relieved of the assignment or contin-
15 ued duty;

16 (c) a process that permits the nurse to exercise the right to refuse
17 the assignment or continued on-duty status when the supervisor denies
18 the request to be relieved if:

19 (i) the supervisor rejects the request without proposing a remedy or
20 the proposed remedy would be inadequate or untimely;

21 (ii) the complaint and investigation process with a regulatory agency
22 would be untimely to address the concern; and

23 (iii) the employee in good faith believes that the assignment meets
24 conditions justifying refusal; and

25 (d) recognition that a nurse who refuses an assignment pursuant to a
26 work assignment policy as set forth in this section shall not be deemed,
27 by reason thereof, to have engaged in negligent or incompetent action,
28 patient abandonment, or otherwise to have violated any law relating to
29 nursing.

30 § 2. The department of health shall publish a report containing the
31 data for each year of the program and for each participating facility.
32 Such report shall include, but not be limited to:

33 1. the impact that the new staffing levels had on payroll;

34 2. overall cost for each facility to implement the new staffing stand-
35 ards;

36 3. the number of patients who re-enter care in this facility, exclud-
37 ing routine follow-up care, after having been treated there at least
38 once during the program time frame; and

39 4. (i) any reduction or increase in sick days used by nurses in these
40 participating facilities, (ii) any reduction or increase in workers'
41 compensation claims filed by nurses, and (iii) any reduction or increase
42 in overtime used by nurses.

43 § 3. This act shall take effect on the one hundred eightieth day after
44 it shall have become a law, provided that any rules and regulations, and
45 any other actions necessary to implement the provisions of this act on
46 its effective date are authorized and directed to be completed on or
47 before such date; and provided, further that this act shall expire and
48 be deemed repealed three years after such effective date.