STATE OF NEW YORK

108--B

2021-2022 Regular Sessions

IN ASSEMBLY

(Prefiled)

January 6, 2021

Introduced by M. of A. GUNTHER, GOTTFRIED, PEOPLES-STOKES, BARRETT, L. ROSENTHAL, BRONSON, COLTON, BENEDETTO, CRUZ, MAGNARELLI, WEPRIN, J. RIVERA, FALL, AUBRY, OTIS, STECK, SANTABARBARA, ZEBROWSKI, ABINANTI, BARRON, SEAWRIGHT, WALKER, BICHOTTE HERMELYN, RICHARDSON, HYNDMAN, PICHARDO, JOYNER, JEAN-PIERRE, ROZIC, KIM, HEVESI, O'DONNELL, DILAN, DAVILA, HUNTER, WILLIAMS, CARROLL, WOERNER, PHEFFER AMATO, JONES, VANEL, NIOU, TAYLOR, DINOWITZ, DICKENS, WALLACE, REYES, STERN, SAYEGH, JACOBSON, McMAHON, ABBATE, CAHILL, FERNANDEZ, FRONTUS, EPSTEIN, BUTTENSCHON, RAMOS, DARLING, BRAUNSTEIN, DE LA ROSA, GRIFFIN, QUART, McDONALD, ENGLEBRIGHT, GALLAGHER, BURKE, KELLES, CYMBROWITZ, CLARK, MEEKS, BRABENEC, SMITH, MONTESANO, SALKA, SCHMITT, MORINELLO, B. MILLER, ASHBY, M. MILLER, DeSTEFANO, FORREST, GONZALEZ-ROJAS, BURDICK, MAMDANI, MITAYNES, CONRAD, CUSICK, ANDERSON, ZINERMAN, LAWLER -- Multi-Sponsored by -- M. of A. BARNWELL, COOK, FAHY, GALEF, GLICK, LUPARDO, McDONOUGH, MIKULIN, PAULIN, PERRY, PRETLOW, RA, D. ROSENTHAL, SIMON, SOLAGES, THIELE -- read once and referred to the Committee on Health -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- reported and referred to the Committee on Ways and Means -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the public health law, in relation to establishing clinical staffing committees

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

Section 1. Section 2805-t of the public health law, as added by chapter 422 of the laws of 2009, is amended to read as follows:

§ 2805-t. [~~Disclosure~~] **Clinical staffing committees and disclosure** of nursing quality indicators. 1. **Legislative intent. The legislature hereby finds and declares:**

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

LBD02466-12-1

(a) Research demonstrates that nurses play a critical role in improving patient safety and quality of care;

(b) Appropriate staffing of general hospital personnel, including registered nurses available for patient care, assists in reducing errors, complications and adverse patient care events, improves staff safety and satisfaction, and reduces incidences of workplace injuries;

(c) Health care professional, technical, and support staff comprise vital components of the patient care team, bringing their particular skills and services to ensuring quality patient care;

(d) Ensuring sufficient staffing of general hospital personnel, including registered nurses, is an urgent public policy priority in order to protect patients and support greater retention of registered nurses and safer working conditions; and

(e) It is the public policy of the state to promote evidence-based nurse staffing standards and increase transparency of health care data and decision making based on the data.

2. Clinical staffing committee. (a) Each general hospital licensed pursuant to this article shall establish and maintain a clinical staffing committee, either by creating a new committee or assigning the functions of the clinical staffing committee to an existing committee, no later than January first, two thousand twenty-two.

(b) Where a collective bargaining agreement provides for a staffing committee, the required functions of the clinical staffing committee established pursuant to this section shall be incorporated into that committee. Any staffing or non-staffing committees established by a collective bargaining agreement, shall continue to function in accordance with the terms of the agreement, and the clinical staffing committee established by this section shall not limit or otherwise supplant the collective bargaining agreement.

(c) At least one-half of the members of the clinical staffing committee shall be registered nurses, licensed practical nurses, and ancillary members of the frontline team currently providing or supporting direct patient care and up to one-half of the members shall be selected by the general hospital administration and shall include but not be limited to the chief financial officer, the chief nursing officer, and patient care unit directors or managers or their designees. The selection of the registered nurses, licensed practical nurses, and ancillary frontline team members of the committee shall be according to their respective collective bargaining agreements if there is one in effect at the general hospital for their bargaining unit. If there is no applicable collective bargaining agreement, the members of the clinical staffing committee who are registered nurses, licensed practical nurses, and ancillary members providing direct patient care shall be selected by their peers. Ancillary members of the frontline team on the committee shall include but are not limited to patient care technicians, certified nursing assistants, other non-licensed staff assisting with nursing or clerical tasks, and unit clerks.

3. Employee participation. Participation in the clinical staffing committee by a general hospital employee shall be on scheduled work time and compensated at the appropriate rate of pay. Clinical staffing committee members shall be fully relieved of all other work duties during meetings of the committee and shall not have work duties added or displaced to other times as a result of their committee responsibilities.

4. Primary responsibilities. Primary responsibilities of the clinical staffing committee shall include the following functions:

(a) Development and oversight of implementation of an annual clinical staffing plan. The clinical staffing plan shall include specific staffing for each patient care unit and work shift and shall be based on the needs of patients. Staffing plans shall include specific guidelines or ratios, matrices, or grids indicating how many patients are assigned to each registered nurse and the number of nurses and ancillary staff to be present on each unit and shift and shall be used as the primary component of the general hospital staffing budget.

(b) Factors to be considered and incorporated in the development of the plan shall include, but are not limited to:

(i) Census, including total numbers of patients on the unit on each shift and activity such as patient discharges, admissions, and transfers;

(ii) Measures of acuity and intensity of all patients and nature of the care to be delivered on each unit and shift;

(iii) Skill mix;

(iv) The availability, level of experience, and specialty certification or training of nursing personnel providing patient care, including charge nurses, on each unit and shift;

(v) The need for specialized or intensive equipment;

(vi) The architecture and geography of the patient care unit, including but not limited to placement of patient rooms, treatment areas, nursing stations, medication preparation areas, and equipment;

(vii) Mechanisms and procedures to provide for one-to-one patient observation, when needed, for patients on psychiatric or other units as appropriate;

(viii) Other special characteristics of the unit or community patient population, including age, cultural and linguistic diversity and needs, functional ability, communication skills, and other relevant social or socio-economic factors;

(ix) Measures to increase worker and patient safety, which could include measures to improve patient throughput;

(x) Staffing guidelines adopted or published by other states or local jurisdictions, national nursing professional associations, specialty nursing organizations, and other health professional organizations;

(xi) Availability of other personnel supporting nursing services on the unit;

(xii) Waiver of plan requirements in the case of unforeseeable emergency circumstances as defined in subdivision fourteen of this section;

(xiii) Coverage to enable registered nurses, licensed practical nurses, and ancillary staff to take meal and rest breaks, planned time off, and unplanned absences that are reasonably foreseeable as required by law or the terms of an applicable collective bargaining agreement, if any, between the general hospital and a representative of the nursing or ancillary staff;

(xiv) The nursing quality indicators required under subdivision seventeen of this section;

(xv) General hospital finances and resources; and

(xvi) Provisions for limited short-term adjustments made by appropriate general hospital personnel overseeing patient care operations to the staffing levels required by the plan, necessary to account for unexpected changes in circumstances that are to be of limited duration.

(c) Semiannual review of the staffing plan against patient needs and known evidence-based staffing information, including the nursing sensitive quality indicators collected by the general hospital.

(d) Review, assessment, and response to complaints regarding potential violations of the adopted staffing plan, staffing variations, or other concerns regarding the implementation of the staffing plan and within the purview of the committee.

5. Compliance provisions. (a) The clinical staffing plan shall comply with all federal and state laws and regulations and shall not diminish other standards contained in state or federal law and regulations, or the terms of an applicable collective bargaining agreement, if any.

(b) The clinical staffing plan shall comply with applicable laws and regulations, including, but not limited to:

(i) Regulations made by the department on burn unit staffing, liver transplant staffing, and operating room circulating nurse staffing;

(ii) Staffing regulations to be promulgated by the commissioner relating to staffing in intensive care and critical care units no later than January first, two thousand twenty-two. Such regulations shall consider the factors set forth in paragraph (b) of subdivision four of this section, standards in place in neighboring states, and a minimum standard of twelve hours of registered nurse care per patient per day;

(iii) Such other staffing standards or regulations as are currently in effect or may hereafter be established by the department or enacted by the legislature; and

(iv) The provisions of section one hundred sixty-seven of the labor law and any related regulations.

(c) The clinical staffing plan shall comply with and incorporate any minimum staffing levels provided for in any applicable collective bargaining agreement, including but not limited to nurse-to-patient ratios, caregiver-to-patient ratios, staffing grids, staffing matrices, or other staffing provisions.

6. Process for adoption of clinical staffing plans. (a) The clinical staffing committee shall produce the general hospital's annual clinical staffing plan by July first of each year.

(b) Clinical staffing plans shall be developed and adopted by consensus of the clinical staffing committee. For the purposes of determining whether there is a consensus, the management members of the committee shall have one vote and the employee members of the committee shall have one vote, regardless of the actual number of members of the committee. Each side may determine its own method of casting its vote to adopt all or part of the clinical staffing plan.

(c) The general hospital shall adopt any clinical staffing plan that is wholly or partially recommended by a consensus of the clinical staffing committee. If there is no consensus on the recommended staffing plan or any of its parts, the chief executive officer of the general hospital shall use the officer's discretion to adopt a plan or partial plan for which there is no consensus. In this case, the chief executive officer shall provide a written explanation of the elements of the clinical staffing plan that the committee was unable to agree on, including the final written proposals from the two parties and their rationales. In no event may a chief executive officer fail to include in the adopted plan any staffing related terms and conditions of the plan that has previously been adopted through any applicable collective bargaining agreement.

(d) Each general hospital shall adopt and submit its first hospital clinical staffing plan under this section to the department no later than July first, two thousand twenty-two and annually thereafter. The plan submitted to the department shall, where applicable, include the written explanation from the chief executive officer and written proposals from the two parties regarding elements that the committee did

not agree on as required in paragraph (c) of this subdivision. The submitted clinical staffing plan shall include data, from at least the previous year, on the frequency and duration of variations from the adopted clinical staffing plan, the number of complaints relating to the clinical staffing plan and their disposition, as well as descriptions of unresolved complaints submitted pursuant to paragraph (b) of subdivision seven of this section. The department shall post the plan as part of each individual general hospital's health profile on the website of the department no later than July thirty-first of each year. If the adopted clinical staffing plan is subsequently amended, the amended plan shall be submitted to the department within thirty days of adoption. Adopted staffing plans shall be amended to include newly created units and existing units that undergo clinical or programmatic changes that fundamentally alter their character or nature. The department shall post amended staffing plans upon receipt.

7. Implementation of clinical staffing plans. (a) Beginning January first, two thousand twenty-three, and annually thereafter, each general hospital shall implement the clinical staffing plan adopted by July first of the prior calendar year, and any subsequent amendments, and assign personnel to each patient care unit in accordance with the plan.

(b) A registered nurse, licensed practical nurse, ancillary member of the frontline team, or collective bargaining representative may report to the clinical staffing committee any variations where the personnel assignment in a patient care unit is not in accordance with the adopted staffing plan and may make a complaint to the committee based on the variations.

(c) The clinical staffing committee shall develop a process to examine, respond to, and track data submitted under paragraph (b) of this subdivision. The clinical staffing committee may by consensus, as described in paragraph (b) of subdivision six of this section, determine a complaint resolved or dismissed. The clinical staffing committee shall also establish agreed upon rules and criteria to provide for confidentiality of complaints that are in the process of being examined or are found to be unsubstantiated. This subdivision does not infringe upon or limit the rights of any collective bargaining representative of employees, or of any employee or group of employees pursuant to applicable law, including without limitation any applicable state or federal labor laws.

8. Posting of staffing information. Each general hospital shall post, in a publicly conspicuous area on each patient care unit, the clinical staffing plan for that unit and the actual daily staffing for that shift on that unit as well as the relevant clinical staffing.

9. Retaliation and intimidation prohibited. A general hospital shall not retaliate against or engage in any form of intimidation of:

(a) An employee for performing any duties or responsibilities in connection with the clinical staffing committee; or

(b) An employee, patient, or other individual who notifies the clinical staffing committee or the hospital administration of the individual's staffing concerns.

10. Special considerations. Nothing in this section is intended to create unreasonable burdens on critical access hospitals under 42 U.S.C. Sec. 1395i-4 and sole community hospitals under 42 U.S.C. Sec. 1395ww(d)(5) related to the operation of their clinical staffing committees. Critical access and sole community hospitals may develop flexible approaches to accomplish the requirements of this section. Clinical staffing plans from such entities submitted to the department shall

contain a description of any ways in which the general hospital's approach to creating the plan differed from the process outlined in this section. This subdivision does not relieve such entities from compliance with other provisions of this section related to the adoption, implementation and adherence to an adopted clinical staffing plan, reporting and disclosure, or other requirements of this section.

11. Investigations. (a) The department shall investigate potential violations of this section following receipt of a complaint with supporting evidence, of failure to:

(i) Form or establish a clinical staffing committee;

(ii) Comply with the requirements of this section in creating a clinical staffing plan;

(iii) Adopt all or part of a clinical staffing plan that is approved by consensus of the clinical staffing committee and submitted to the department;

(iv) Conduct a semiannual review of a clinical staffing plan; or

(v) Submit to the department a clinical staffing plan on an annual basis and any updates.

(b) The department shall initiate an investigation of unresolved complaints, that have first been submitted to the clinical staffing committee, regarding compliance with the clinical staffing plan, personnel assignments in a patient care unit or staffing levels, or any other requirement of the adopted clinical staffing plan, excluding complaints determined by the clinical staffing committee to be resolved or dismissed as determined by consensus of the clinical staffing committee as described in paragraph (b) of subdivision six of this section.

(c) The department shall initiate an investigation after making an assessment that there is a pattern of failure to resolve complaints submitted to the clinical staffing committee or a pattern of failure to reach consensus on the adoption of all or part of a clinical staffing plan. In the case of a pattern of failure to resolve complaints or to reach consensus on the adoption of all or part of a clinical staffing plan, the department shall determine if the pattern was due to one of the parties routinely refusing to resolve complaints or reach consensus.

(d) Any department investigation of a complaint under this subdivision shall consider whether unforeseeable emergency circumstances as defined in subdivision fourteen of this section contributed to the failure of the general hospital to comply with this section.

(e) After an investigation conducted under paragraph (a) or (b) of this subdivision, if the department determines that there has been a violation, the department shall require the general hospital to submit a corrective plan of action within forty-five days of the presentation of findings from the department to the hospital. If the department determines after investigation under paragraph (c) of this subdivision that the general hospital representatives on the clinical staffing committee were responsible for a pattern of not resolving complaints or for a pattern of not reaching consensus, the department shall require the general hospital to submit a corrective action plan within forty-five days of the presentation of findings to the general hospital. If the department finds that the frontline staff representatives on the clinical staffing committee were responsible for a pattern of not resolving complaints or for a pattern of not reaching consensus, the department shall not require the general hospital to submit a corrective action plan or impose a civil penalty on the general hospital pursuant to subdivision twelve of this section.

12. Civil penalties. In the event that a general hospital fails to submit or submits but fails to implement a corrective action plan in response to a violation or violations found by the department based on a complaint filed pursuant to paragraph (a), (b) or (c) of subdivision eleven of this section, the department may impose a civil penalty as authorized by section twelve of this chapter for all violations asserted against the general hospital, until the general hospital submits or implements a corrective action plan or takes other action directed by the department.

13. Posting of penalties and related information. The department shall maintain for public inspection, including posting on the general hospital profile on the department website, records of any civil penalties, administrative actions, or license suspensions or revocations imposed on general hospitals under this section.

14. Unforeseeable emergency circumstances. (a) For purposes of this section, "unforeseeable emergency circumstance" means:

(i) Any officially declared national, state, or municipal emergency;

(ii) When a general hospital disaster plan is activated; or

(iii) Any unforeseen disaster or other catastrophic event that immediately affects or increases the need for health care services.

(b) In determining whether a general hospital has violated its obligations under this section to comply with the general hospital's clinical staffing plan, it shall not be a defense that it was unable to secure sufficient staff if the lack of staffing was foreseeable and could be prudently planned for or involved routine nurse staffing needs that arose due to typical staffing patterns, typical levels of absenteeism, and time off typically approved by the employer for vacation, holidays, sick leave, and personal leave.

15. Complaints. Nothing in this section shall be construed to preclude the ability to submit a complaint to the department as provided for under this chapter. Nothing in this section shall be construed as supplanting other complaint mechanisms established by a general hospital, including mechanisms designed to aid in compliance with other federal, state or local laws. Nothing in this section shall be construed as limiting or supplanting the rights of employees and their collective bargaining representatives to fully enforce any and all rights under the terms of a collective bargaining agreement. An employer shall not assert or attempt to assert a claim that enforcement of the collective bargaining agreement is barred or limited by any provisions of this section.

16. Annual report. (a) The department shall submit an annual report to the speaker of the assembly, the temporary president of the senate, and the chairs of the health committees of the assembly and senate and the governor on or before December thirty-first of each year. This report shall include the number of complaints submitted to the department, the disposition of these complaints, the number of investigations conducted, and the associated costs for complaint investigations, if any.

(b) Prior to the submission of the report, the commissioner shall convene a stakeholder workgroup consisting of hospital associations and unions representing nurses and other ancillary members of the frontline team. The stakeholder workgroup shall review the report prior to its submission to the speaker of the assembly, the temporary president of the senate, and the chairs of the health committees of the assembly and senate.

17. Disclosure of nursing quality indicators. (a) Every facility with an operating certificate pursuant to the requirements of this article

shall make available to the public information regarding nurse staffing and patient outcomes as specified by the commissioner by rule and regulation. The commissioner shall promulgate rules and regulations on the disclosure of nursing quality indicators providing for the disclosure of information including at least the following, as appropriate to the reporting facility:

[~~(a)~~] **(i)** The number of registered nurses providing direct care and the ratio of patients per registered nurse, full-time equivalent, providing direct care. This information shall be expressed in actual numbers, in terms of total hours of nursing care per patient, including adjustment for case mix and acuity, and as a percentage of patient care staff, and shall be broken down in terms of the total patient care staff, each unit, and each shift.

[~~(b)~~] **(ii)** The number of licensed practical nurses providing direct care. This information shall be expressed in actual numbers, in terms of total hours of nursing care per patient including adjustment for case mix and acuity, and as a percentage of patient care staff, and shall be broken down in terms of the total patient care staff, each unit, and each shift.

[~~(c)~~] **(iii)** The number of unlicensed personnel utilized to provide direct patient care, including adjustment for case mix and acuity. This information shall be expressed both in actual numbers and as a percentage of patient care staff and shall be broken down in terms of the total patient care staff, each unit, and each shift.

[~~(d)~~] **(iv)** Incidence of adverse patient care, including incidents such as medication errors, patient injury, decubitus ulcers, nosocomial infections, and nosocomial urinary tract infections.

[~~(e)~~] **(v)** Methods used for determining and adjusting staffing levels and patient care needs and the facility's compliance with these methods.

[~~(f)~~] **(vi)** Data regarding complaints filed with any state or federal regulatory agency, or an accrediting agency, and data regarding investigations and findings as a result of those complaints, degree of compliance with acceptable standards, and the findings of scheduled inspection visits.

[~~2.~~] **(b)** Such information shall be provided to the commissioner of any state agency responsible for licensing or accrediting the facility, or responsible for overseeing the delivery of services either directly or indirectly**, to any employee of a general hospital or the employee's collective bargaining agent, if any,** and to any member of the public who requests such information directly from the facility. Written statements containing such information shall state the source and date thereof.

(c) The commissioner shall make regulations to provide a uniform format or form for complying with the reporting requirements of subparagraphs (i), (ii) and (iii) of paragraph (a) of this subdivision, allowing patients and the public to clearly understand and compare staffing patterns and actual levels of staffing across facilities. Such uniform format or form shall allow facilities to include a description of additional resources available to support unit level patient care and a description of the general hospital. The information required by subparagraphs (i), (ii) and (iii) of paragraph (a) of this subdivision, reported in a manner determined by the commissioner, shall be filed with the department electronically on a quarterly basis and shall be available to the public on the department's website. The regulations shall take effect no later than December thirty-first, two thousand twenty-two. Information required to be provided pursuant to subparagraphs (i),

(ii) and (iii) of paragraph (a) of this subdivision shall be made available to the public no later than July first, two thousand twenty-three.

18. Advisory commission. (a) There is hereby established an independent advisory commission, composed of nine experts in staffing standards and quality of patient care, including: three experts in nursing practice, quality of nursing care or patient care standards, one of whom shall be appointed by the governor, one of whom shall be appointed by the speaker of the assembly and one of whom shall be appointed by the temporary president of the senate; three representatives of unions representing nurses, one of whom shall be appointed by the governor, one of whom shall be appointed by the speaker of the assembly and one of whom shall be appointed by the temporary president of the senate; and three members representing general hospitals, one of whom shall be appointed by the governor, one of whom shall be appointed by the speaker of the assembly and one of whom shall be appointed by the temporary president of the senate. The members of the commission shall serve at the pleasure of the appointing official. Members of the commission shall keep confidential any information received in the course of their duties and may only use such information in the course of carrying out their duties on the commission, except those reports required to be issued by the commission under this section, which may only include de-identified information.

(b) The advisory commission shall convene from time to time in order to evaluate the effectiveness of the clinical staffing committees required by this section. Such review shall evaluate the following metrics, including but not limited to quantitative and qualitative data on whether staffing levels were improved and maintained, patient satisfaction, employee satisfaction, patient quality of care metrics, workplace safety, and any other metrics the commission deems relevant. The commission shall also review the annual report submitted by the department and make recommendations to the speaker of the assembly, the temporary president of the senate, and the chairs of the health committees of the assembly and senate as set forth in paragraph (d) of this subdivision.

(c) The advisory commission may collect and shall be provided all relevant information, necessary to carry out its functions, from the department and other state agencies. The commission may also invite testimony by experts in the field and from the public. In making its recommendations to the speaker of the assembly, the temporary president of the senate, and the chairs of the health committees of the assembly and senate, the commission shall analyze relevant data, including data and factors set forth in paragraph (b) of subdivision four of this section related to clinical staffing plans. The commission may also make recommendations for additional or enhanced enforcement mechanisms or powers to address general hospital failure to comply with this section and recommend the appropriation of funding for the department to enforce this section or to assist general hospitals in hiring additional staff to comply with this section.

(d) The advisory commission shall submit to the speaker of the assembly, the temporary president of the senate and the chairs of the health committees of the assembly and senate, and make available to the public a report that makes recommendations to the speaker of the assembly, the temporary president of the senate, and the chairs of the health committees of the assembly and senate for further legislative action, if any, in order to improve working conditions and quality of care in general hospitals pursuant to this section and its intent.

(e) The commission shall submit its report and recommendations to the speaker of the assembly, the temporary president of the senate, and the chairs of the health committees of the assembly and senate no later than October thirty-first, two thousand twenty-four, once three years of staffing plans have been submitted to the department pursuant to this section.

(f) Members of the commission shall receive no compensation for their services, but shall be allowed their actual and necessary expenses incurred in the performance of their duties hereunder.

(g) The legislature may appropriate funding for the commission to hire staff or consultants and provide for the operation of the commission as reasonably necessary to fulfill its functions.

§ 2. If any provision of this act, or any application of any provision of this act, is held to be invalid, or to violate or be inconsistent with any federal law or regulation, that shall not affect the validity or effectiveness of any other provision of this act, or of any other application of any provision of this act, which can be given effect without that provision or application; and to that end, the provisions and applications of this act are severable.

§ 3. This act shall take effect immediately.