

The Patient-Safe Staffing Act
The New Mexico Legislature 2019

AN ACT

RELATING TO HEALTH CARE; ENACTING THE PATIENT-SAFE STAFFING ACT;
REQUIRING HOSPITALS TO ESTABLISH STAFFING LEVELS FOR HOSPITAL
NURSING UNITS; GIVING A NURSE THE RIGHT TO REFUSE AN ASSIGNMENT
UNDER CERTAIN CIRCUMSTANCES; REQUIRING HOSPITALS TO POST AND
REPORT THEIR DAILY HOSPITAL NURSING UNIT PATIENT CENSUS AND STAFFING
LEVELS; MAKING THE DEPARTMENT OF HEALTH RESPONSIBLE FOR POSTING
HOSPITAL REPORTS ON THE DEPARTMENT OF HEALTH'S WEBSITE FOR
CONSUMERS; AUTHORIZING THE DEPARTMENT OF HEALTH TO ENFORCE
COMPLIANCE WITH THE PATIENT-SAFE STAFFING ACT THROUGH PENALTIES
AND CORRECTIVE ACTION; AUTHORIZING THE DEPARTMENT OF HEALTH TO
PROMULGATE RULES TO IMPLEMENT THE PATIENT-SAFE STAFFING ACT;
PROVIDING WHISTLEBLOWER PROTECTION TO EMPLOYEES WHO FILE A
GRIEVANCE OR COMPLAINT UNDER THE PATIENT-SAFE STAFFING ACT.
BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. [NEW MATERIAL] SHORT TITLE.--This act may be cited as the "Patient-Safe Staffing Act".

SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the Patient-Safe Staffing Act:

A. "ancillary staff" means a certified nurse assistant, a medication aide, an obstetric technician, a gastroenterology technician, an emergency room technician, an operating room technician, a behavioral health aide, a unit secretary, a nursing aide, an orderly and any other personnel who assist in the provision of nursing care;

B. "committee" means a nursing staffing committee;

C. "critical access hospital" means a hospital that has 25 or fewer acute care inpatient beds, is located more than 35 miles from another hospital, maintains an annual average length of stay of 96 hours or less for acute care patients, and provides 24/7 emergency care services;

D. "department" means the department of health;

E. "hospital" means any general, acute care hospital licensed by the department, whether publicly or privately owned;

F. "nurse" means a registered nurse or a licensed practical nurse; and

G. "patient abandonment" means a nurse's unilateral severance of an established nurse-patient relationship without giving reasonable notice in accordance with hospital policy so that arrangements can be made for continuation of nursing care by others;

H. "patient census" means the actual number of inpatients that occupy beds in a nursing unit.

I. "scope of practice" means the parameters within which nurses practice based upon education, experience, licensure, certification and expertise;

J. "unit" means a hospital nursing unit.

SECTION 3. [NEW MATERIAL] COMMITTEE REQUIRED.--A hospital shall have a committee, chaired by the director of nursing, composed as follows:

A. a simple majority of the members shall be nurses who provide direct patient care; and

B. the other members shall be other qualified persons as determined by the hospital.

SECTION 4. [NEW MATERIAL] DUTIES OF COMMITTEE.—A committee shall:

A. develop a staffing plan for each of the hospital's units;

B. select outcome indicators for each unit from among the national database of nursing quality indicators, hospital compare, patient satisfaction surveys and such other appropriate standards as determined by the committee;

C. conduct an annual or more frequent review of the staffing plan for each unit to update or modify the staffing plan as determined by the committee; and

D. conduct an annual or more frequent review of outcome indicators for each unit to update or modify the outcome indicators as determined by the committee.

SECTION 5. [NEW MATERIAL] NURSING STAFFING PLAN REQUIREMENTS.—each unit's staffing plan shall:

A. specify the minimum number of nurses and ancillary staff required for each shift on the unit based upon the level of intensity of care required by patients and the variability in the number of admissions, discharges and transfers under existing conditions;

B. take into account that Critical Access Hospitals are not subject to the provisions of the bill;

C. ensure that a nurse receives adequate orientation before being assigned to a unit; and

D. specify circumstances, such as a declared state of emergency, under which compliance with the staffing plan may be waived.

SECTION 6. [NEW MATERIAL] NURSING STAFFING LEVELS.—

A. Nursing staffing levels shall take into consideration:

(1) recommendations from the hospital's chief nursing officer, direct patient care nurses, ancillary staff, professional nursing organizations and other appropriate resources as determined by the committee;

(2) the characteristics of patients in each unit, including patient acuity as well as variability in the number of discharges, admissions and transfers per shift;

(3) available medical and health information technology and systems resources;

(4) the education, training and experience of nurses who provide direct patient care for the purpose of staffing a unit with an appropriate mix of more-experienced and less-experienced nurses based on patients' needs; and

(5) the ability to meet the needs of the community being served, and

(6) such other appropriate factors as determined by the committee.

B. Nursing staffing levels for each unit shall be determined by majority vote of the committee.

C. A hospital shall formulate and adopt procedures for maintaining nursing staffing levels determined by the committee, which may require the hiring of additional nurses.

D. A hospital shall not achieve nursing staffing levels with mandated overtime.

SECTION 7. [NEW MATERIAL] RIGHT TO REFUSE ASSIGNMENT.—

A. A nurse may refuse an assignment if, and only if:

(1) the nurse lacks the requisite education, training and experience to ensure patient safety; or

(2) the assignment is outside the nurse's scope of practice.

B. Nothing in this section shall be construed to equate a nurse's refusal of an assignment with patient abandonment.

SECTION 8. [NEW MATERIAL] HOSPITAL POSTING AND REPORTING OF NURSING STAFFING LEVELS.--

A. Within one hour of the start of each shift, a hospital shall conspicuously post a daily report in each of its units that contains the:

(1) actual patient census for each shift in that unit;

(2) staffing level for each shift, according to the staffing plan for such unit;
and

(3) actual staffing level for each shift in that unit.

B. The daily report shall include nurses and ancillary staff working in the unit.

C. On a quarterly basis, a hospital shall electronically submit to the department for public disclosure on the department's website, on a date and in a format and form prescribed by the department, an accurate report containing the:

(1) information required in Subsection A of this section for each day of the previous quarter; and

(2) number of daily admissions, discharges and transfers for each shift of each unit.

SECTION 9. [NEW MATERIAL] DUTIES OF DEPARTMENT.--The department shall:

A. prescribe the format, form and due date for a hospital's quarterly submission of the report required of a hospital pursuant to Subsection C of Section 8 of the Patient-Safe Staffing Act. The department shall require information contained in each hospital's quarterly reports to be reported in a uniform and clearly understandable format that permits consumers of hospital services to make meaningful comparisons of nursing staffing levels;

B. promptly publish each quarterly report required of a hospital pursuant to Subsection C of Section 8 of the Patient-Safe Staffing Act on its internet website for public inspection;

C. perform an audit, if during posting on the department's website, a discrepancy or illogical staffing level is suspected, of the information contained in a quarterly report required of a hospital pursuant to Subsection C of Section 8 of the Patient-Safe Staffing Act;

D. enforce a hospital's compliance with the provisions of the Patient-Safe Staffing Act and with any related rules promulgated by the department to implement the provisions of that act through the imposition of penalties and corrective action, which information shall also be published on the department's website proximate to the quarterly reports required pursuant to Subsection C of Section 8 of the Patient-Safe Staffing Act;

E. create a process pursuant to which:

(1) aggrieved persons may file complaints for violations of the provisions of the Patient-Safe Staffing Act;

(2) the department investigates the facts alleged in these complaints;

(3) the department issues a report and takes appropriate action to ensure that a hospital is in compliance with the provisions of the Patient-Safe Staffing Act and department rules any related orders; and

F. promulgate such rules as are necessary to implement and enforce the provisions of the Patient-Safe Staffing Act.

SECTION 10. [NEW MATERIAL] WHISTLEBLOWER PROTECTION.--A hospital shall not discriminate or retaliate in any manner against an employee as a result of a grievance or complaint initiated by the employee relating to:

A. a committee or plan;

B. the posting or reporting of, or the failure to post or report, daily nursing staffing level Information required by the Patient-Safe Staffing Act; and

C. the exercise of the right to refuse an assignment pursuant to the Patient-Safe Staffing Act.

SECTION 11. [NEW MATERIAL] ACTIONS FOR VIOLATIONS-- INJUNCTIVE RELIEF.—Whenever it appears that the department is not enforcing the provision of the Patient-Safe Staffing Act or any department rule promulgated pursuant to that act, the attorney general or a party aggrieved or potentially aggrieved by that violation may file suit in the district court of any county for injunctive relief to enforce the provisions of the Patient-Safe Staffing Act or department rules.

SECTION 12. (NEW MATERIAL) NON-EXCLUSION OF OTHER RIGHTS AND REMEDIES. – The rights and remedies provided for in the Patient-Safe Staffing Act are not exclusive and shall be in addition to any other rights or remedies provided for in any other law or available under common law.