

HOUSE LABOR AND ECONOMIC DEVELOPMENT COMMITTEE SUBSTITUTE FOR
HOUSE BILL 288

53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017

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.

1 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

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

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

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

12 B. "committee" means a nursing staffing committee;

13 C. "department" means the department of health;

14 D. "hospital" means any general or special hospital
15 licensed by the department, whether publicly or privately
16 owned;

17 E. "nurse" means a registered nurse or a licensed
18 practical nurse;

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

24 G. "unit" means a hospital nursing unit.

25 SECTION 3. [NEW MATERIAL] COMMITTEE REQUIRED.--A hospital

1 shall have a committee composed as follows:

2 A. a simple majority of the members shall be nurses
3 who provide direct patient care but are not hospital nurse
4 managers or hospital administrators, at least one of whom
5 provides direct care in a nurse specialty unit; and

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

8 SECTION 4. [NEW MATERIAL] DUTIES OF COMMITTEE.--A
9 committee shall:

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

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

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

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

22 SECTION 5. [NEW MATERIAL] NURSING STAFFING PLAN
23 REQUIREMENTS.--Each unit's staffing plan shall:

24 A. specify the minimum number of nurses and
25 ancillary staff required for each shift on the unit based upon

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underscored material = new
[bracketed material] = delete

1 the level of intensity of care required by patients and the
2 variability in the number of admissions, discharges and
3 transfers under existing conditions;

4 B. take into account conditions or circumstances
5 specific to a rural, general or acute care hospital;

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

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

11 SECTION 6. [NEW MATERIAL] NURSING STAFFING LEVELS.--

12 A. Nursing staffing levels shall take into
13 consideration:

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

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

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

23 (4) the education, training and experience of
24 nurses who provide direct patient care for the purpose of
25 staffing a unit with an equal mix of more-experienced and less-

1 experienced nurses; and

2 (5) such other appropriate factors as
3 determined by the committee.

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

6 C. A hospital shall formulate and adopt an
7 algorithm for maintaining nursing staffing levels determined by
8 the committee, which may require the hiring of additional
9 nurses.

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

12 SECTION 7. [NEW MATERIAL] RIGHT TO REFUSE ASSIGNMENT.--

13 A. A nurse may refuse an assignment if:

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

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

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

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

23 A. Within one hour of the start of each shift, a
24 hospital shall conspicuously post a daily report in each of its
25 units, next to posted patient rights, that contains the:

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

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

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

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

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

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

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

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

20 A. prescribe the format, form and due date for a
21 hospital's quarterly submission of the report required of a
22 hospital pursuant to Subsection C of Section 8 of the Patient
23 Safe Staffing Act. The department shall require information
24 contained in each hospital's quarterly reports to be reported
25 in a uniform and clearly understandable format that permits

1 consumers of hospital services to make meaningful comparisons
2 of nursing staffing levels;

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

7 C. periodically audit the information contained in
8 a quarterly report required of a hospital pursuant to
9 Subsection C of Section 8 of the Patient Safe Staffing Act;

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

18 E. create a process pursuant to which:

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

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

23 (3) the department issues a report and takes
24 appropriate action to ensure that a hospital is in compliance
25 with the provisions of the Patient Safe Staffing Act and

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1 department rules and any related orders; and

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

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

9 A. a committee or plan;

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

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

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