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AN ACT

RELATING TO HEALTH CARE; ENACTING THE SAFE HARBOR FOR NURSES
ACT; ESTABLISHING SAFE HARBOR FOR REGISTERED NURSES AND
LICENSED PRACTICAL NURSES; REQUIRING EMPLOYERS TO OFFER SAFE
HARBOR TO NURSES WHO ARE REQUESTED TO ENGAGE IN PRACTICES
THAT NURSES BELIEVE TO BE IN VIOLATION OF THEIR LEGAL DUTIES;
REQUIRING EMPLOYERS TO DEVELOP A PROCESS FOR INVOKING SAFE
HARBOR; PREVENTING EMPLOYERS FROM DISCIPLINING NURSES FOR
INVOKING SAFE HARBOR.

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

SECTION 1. SHORT TITLE.--This act may be cited as the
"Safe Harbor for Nurses Act".

SECTION 2. DEFINITIONS.--As used in the Safe Harbor for
Nurses Act:

A. "assignment" means the designated
responsibility for the provision or supervision of nursing
care for a defined work period in a defined work setting,
including the specified functions, duties, practitioner
orders, supervisory directives and amount of work designated
as an individual nurse's responsibility; provided that
changes in a nurse's assignment may occur at any time during
the work period;

B. "good faith" means taking action supported by a
sincere belief with a reasonable factual or legal basis other

1 than the nurse's moral, religious or personal beliefs;

2 C. "health care facility" means an entity licensed
3 by the department of health that provides health care on its
4 premises and has three or more nurses;

5 D. "nurse" means a nurse licensed pursuant to the
6 Nursing Practice Act as a registered nurse or a licensed
7 practical nurse; and

8 E. "safe harbor" means a process that:

9 (1) protects a registered nurse or a
10 licensed practical nurse from adverse action by the health
11 care facility where the nurse is working when the nurse makes
12 a good faith request to be allowed to reject an assignment,
13 which request is based on the nurse's:

14 (a) assessment of the nurse's own
15 education, knowledge, competence or experience; and

16 (b) immediate assessment of the risk
17 for patient safety or potential violation of the Nursing
18 Practice Act or board of nursing rules; and

19 (2) provides for further assessment of the
20 situation.

21 SECTION 3. SAFE HARBOR--HEALTH CARE FACILITY
22 RESPONSIBILITY.--

23 A. A nurse may invoke safe harbor when:

24 (1) in the nurse's good faith judgment, the
25 nurse lacks the basic knowledge, skills or abilities

1 necessary to deliver nursing care that is safe and that meets
2 the minimum standards of care to such an extent that
3 accepting the assignment would expose one or more patients to
4 an unjustifiable risk of harm or would constitute a violation
5 of the Nursing Practice Act or board of nursing rules; or

6 (2) the nurse questions the medical
7 reasonableness of another health care provider's order that
8 the nurse is required to execute.

9 B. A nurse who intends to invoke safe harbor shall
10 invoke it before the nurse engages in conduct or an
11 assignment giving rise to the nurse's request for safe
12 harbor. A nurse may also invoke safe harbor at any time
13 during the work period, when an initial assignment changes
14 and, in the nurse's good faith judgment, the change creates a
15 situation that comports with the requirements for invoking
16 safe harbor pursuant to Subsection A of this section. A
17 health care facility shall develop a process by which a nurse
18 employed or contracted by that facility may invoke safe
19 harbor.

20 C. A safe harbor process shall include:

21 (1) notification to all nurses on staff as
22 to how safe harbor may be invoked;

23 (2) notification by the nurse to the nurse's
24 supervisor that the nurse is invoking safe harbor;

25 (3) written documentation with the date,

1 time and location of the invocation of safe harbor and the
2 reason for invocation, signed by the supervisor and the
3 nurse;

4 (4) a post-occurrence review of the
5 situation that:

6 (a) includes at least one other staff
7 nurse and nurse manager, as the health care facility defines
8 those roles; and

9 (b) is used to determine whether
10 additional action is required to minimize the likelihood of
11 similar situations in the future; and

12 (5) documentation of the resolution and
13 review of the matter in which safe harbor was invoked.

14 D. A health care facility shall not retaliate
15 against, demote, suspend, terminate, discipline, discriminate
16 against or report any action to the board of nursing when a
17 nurse makes a good faith request for safe harbor. _____