Councilmember Mary M. Cheh

A BILL

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To establish safe nurse staffing levels at hospitals in the District of Columbia, and for other purposes.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Nurse Safe Staffing Act of 2017".

Sec. 2. Definitions.

The term:

(1) "Declared state of emergency" means an officially designated state of emergency that has been declared by the Federal Government, the Mayor, or the Director, but does not include a state of emergency that results from a labor dispute in the health care industry or consistent understaffing.

(2) "Director" means the Director of the Department of Health.

(3) "Registered nurse" means an individual who has been granted a license to practice as a registered nurse pursuant to D.C. Code § D.C. Code § 3-2301.01.

(4) "Shift" means a scheduled set of hours or duty period to be worked at a hospital.

(5) "Unit" means, with respect to a hospital, an organizational department or separate geographic area of a hospital, including a burn unit, a labor and delivery room, a post-anesthesia service area, an emergency department, an operating room, a pediatric unit, a stepdown or

33 intermediate care unit, a specialty care unit, a telemetry unit, a general medical care unit, a

34 subacute care unit, and a transitional inpatient care unit.

35 Sec. 3. Establishment of Safe Nurse Staffing Levels

36 (a) Each hospital in the District shall implement a hospital-wide staffing plan for nursing

37 services furnished in the hospital.

38 (b) The hospital-wide staffing plan for nursing services implemented by a hospital

39 pursuant to subsection (a) shall:

40 (1) Be developed by the hospital nurse staffing committee established under

41 subsection (c) of this section; and

42 (2) Require that an appropriate number of registered nurses provide direct patient

43 care in each unit and on each shift of the hospital to ensure staffing levels that:

44 (A) Address the unique characteristics of the patients and hospital units;

45 and

46 (B) Result in the delivery of safe, quality patient care, consistent with the

47 requirements under subsection (d) of this section.

48 (c) Each hospital in the District shall establish a hospital nurse staffing committee.

49 (1) The Committee shall include:

50 (A) Registered nurses, who shall comprise at least 55% of the Committee,

51 who provide direct patient care and who are neither hospital nurse managers nor part of the

52 hospital administration staff;

53 (B) Members who are hospital nurse managers;

54 (C) At least 1 registered nurse who provides direct care from each nurse

55 specialty or unit of the hospital; and

56 (D) Such other personnel of the hospital as the hospital determines to be
57 appropriate.
58 (2) The Committee shall:
59 (A) Develop a hospital-wide staffing plan for nursing services furnished in
60 the hospital consistent with the requirements under subsection (d) of this section;
61 (B) Conduct regular, ongoing monitoring of the implementation of the
62 hospital-wide staffing plan for nursing services furnished in the hospital;
63 (C) Carry out evaluations of the hospital-wide staffing plan for nursing
64 services at least annually;
65 (D) Make such modifications to the hospital-wide staffing plan for nursing
66 services as may be appropriate;
67 (E) Develop policies and procedures for overtime requirements of
68 registered nurses providing direct patient care and for appropriate time and manner of relief of
69 such registered nurses during routine absences; and
70 (F) Carry out such additional duties as the Committee determines to be
71 appropriate.
72 (d) A hospital-wide staffing plan for nursing services shall:
73 (1) Be based upon input from the registered nurse staff of the hospital who
74 provide direct patient care or their exclusive representatives, as well as the chief nurse executive;
75 (2) Be based upon the number of patients and the level and variability of intensity
76 of care to be provided to those patients, with appropriate consideration given to admissions,
77 discharges, and transfers during each shift;

78 (3) Take into account contextual issues affecting nurse staffing and the delivery of
79 care, including architecture and geography of the environment and available technology;
80 (4) Take into account the level of education, training, and experience of those
81 registered nurses providing direct patient care;
82 (5) Take into account the staffing levels and services provided by other health
83 care personnel associated with nursing care, such as certified nurse assistants, licensed vocational
84 nurses, licensed psychiatric technicians, nursing assistants, aides, and orderlies;
85 (6) Take into account staffing levels recommended by specialty nursing
86 organizations;
87 (7) Establish adjustable minimum numbers of registered nurses based upon an
88 assessment by registered nurses of the level and variability of intensity of care required by
89 patients under existing conditions;
90 (8) Take into account unit and facility level staffing, quality and patient outcome
91 data, and national comparisons, as available;
92 (9) Ensure that a registered nurse shall not be assigned to work in a particular unit
93 of the hospital without first having established the ability to provide professional care in such
94 unit; and
95 (10) Provide for exemptions from some or all requirements of the hospital-wide
96 staffing plan for nursing services during a declared state of emergency (as defined in subsection
97 (l)(1)) if the hospital is requested or expected to provide an exceptional level of emergency or
98 other medical services.

99 (e) A hospital-wide staffing plan for nursing services may not utilize any minimum
100 number of registered nurses as an upper limit on the nurse staffing of the hospital to which such
101 minimum number applies.
102 Sec. 4. Reporting and Release to Public of Certain Staffing Information.
103 (a) Each hospital shall:
104 (1) Post daily for each shift, in a clearly visible place, a document that specifies in
105 a uniform manner the current number of licensed and unlicensed nursing staff directly
106 responsible for patient care in each unit of the hospital, identifying specifically the number of
107 registered nurses;
108 (2) Upon request, make available to the public:
109 (A) The nursing staff information for the hospital;
110 (B) A detailed written description of the hospital-wide staffing plan
111 implemented by the hospital pursuant to Section 4; and
112 (C) Not later than 90 days after the date on which an evaluation is carried
113 out by the Committee under Section 4, a copy of such evaluation;
114 (3) Not less frequently than quarterly, submit to the Director the nursing staff
115 information described in Section 4 through electronic data submission.
116 (b) The Director shall make the information submitted pursuant to subsection (a)(3) of
117 this section publicly available in a comprehensible format on its website.
118 Sec. 5. Recordkeeping; collection and reporting of quality data; evaluation.
119 (a) Each hospital shall maintain for a period of at least 3 years (or, if longer, until the
120 conclusion of any pending enforcement activities) such records as the Director deems necessary

121 to determine whether the hospital has implemented a hospital-wide staffing plan for nursing
122 services pursuant to Section 4.
123 (b) The Director shall require the collection, aggregation, maintenance, and reporting of
124 quality data relating to nursing services furnished by each hospital.
125 (c) The Director shall use only quality measures for nursing-sensitive care that are
126 endorsed by the consensus-based entity with a contract under section 1890(a).
127 (d) A hospital may enter into agreements with third-party entities that have demonstrated
128 expertise in the collection and submission of quality data on nursing services to collect,
129 aggregate, maintain, and report the quality data of the hospital. Nothing in this section shall be
130 construed to excuse or exempt a hospital that has entered into an agreement described in such
131 clause from compliance with requirements for quality data collection, aggregation, maintenance,
132 and reporting imposed under this paragraph.
133 (e) The Director shall make the data submitted pursuant to subsection (a) publicly
134 available, including by publication on its website.
135 (f) Data made available to the public under subsection (a) shall be presented in a clearly
136 understandable format that permits consumers of hospital services to make meaningful
137 comparisons among hospitals, including concise explanations in plain English of how to interpret
138 the data, of the difference in types of nursing staff, of the relationship between nurse staffing
139 levels and quality of care, and of how nurse staffing may vary based on patient case mix.
140 (g) The Director shall establish a process under which hospitals may review data
141 submitted to the Director pursuant to this subsection to correct errors, if any, contained in that
142 data submission before making the data available to the public.

143 (h) The Director shall provide for the analysis of quality data collected from hospitals in
144 order to evaluate the effect of hospital-wide staffing plans for nursing services on:
145 (1) Patient outcomes that are nursing sensitive (such as pressure ulcers, fall
146 occurrence, falls resulting in injury, length of stay, and central line catheter infections); and
147 (2) Nursing workforce safety and retention (including work-related injury, staff
148 skill mix, nursing care hours per patient day, vacancy and voluntary turnover rates, overtime
149 rates, use of temporary agency personnel, and nurse satisfaction).
150 Sec. 6. Refusal of assignment.
151 (a) A nurse may refuse to accept an assignment as a nurse in a hospital, or in a unit of a
152 hospital, if:
153 (1) The assignment is in violation of the hospital-wide staffing plan for nursing
154 services implemented pursuant to subsection (a); or
155 (2) The nurse is not prepared by education, training, or experience to fulfill the
156 assignment without compromising the safety of any patient or jeopardizing the license of the
157 nurse.
158 Sec. 7. Enforcement.
159 (a) The Director shall enforce the requirements and prohibitions of this section in
160 accordance with the succeeding provisions of this subsection.
161 (b) The Director shall establish procedures under which:
162 (1) Any person may file a complaint that a hospital has violated a requirement of
163 or a prohibition under this section; and
164 (2) Such complaints are investigated by the Director.

165 (c) Except as provided in paragraph (5), if the Director determines that a hospital has
166 violated a requirement of this act, the Director:
167 (1) Shall require the hospital to establish a corrective action plan to prevent the
168 recurrence of such violation; and
169 (2) May impose civil money penalties under subsection (d).
170 (d) In addition to any other penalties prescribed by law, the Director may impose a civil
171 money penalty of not more than $10,000 for each knowing violation of a requirement of this
172 section, except that the Director shall impose a civil money penalty of more than $10,000 for
173 each such violation in the case of a hospital that the Director determines has a pattern or practice
174 of such violations (with the amount of such additional penalties being determined in accordance
175 with a schedule or methodology specified in regulations).
176 Sec. 8. Whistleblower protections.
177 (a) A hospital shall not discriminate or retaliate in any manner against any patient or
178 employee of the hospital because that patient or employee, or any other person, has presented a
179 grievance or complaint, or has initiated or cooperated in any investigation or proceeding of any
180 kind, relating to:
181 (1) The hospital-wide staffing plan for nursing services developed and
182 implemented under this section; or
183 (2) Any right, other requirement or prohibition under this section, including a
184 refusal to accept an assignment described in subsection (f).
185 (b) An employee of a hospital who has been discriminated or retaliated against in
186 employment in violation of this subsection may initiate judicial action in a United States district
187 court and shall be entitled to reinstatement, reimbursement for lost wages, and work benefits

188 caused by the unlawful acts of the employing hospital. Prevailing employees are entitled to

189 reasonable attorney's fees and costs associated with pursuing the case.

190 (c) A patient who has been discriminated or retaliated against in violation of this

191 subsection may initiate judicial action in a United States district court. A prevailing patient shall

192 be entitled to liquidated damages of $5,000 for a violation of this statute in addition to any other

193 damages under other applicable statutes, regulations, or common law. Prevailing patients are

194 entitled to reasonable attorney's fees and costs associated with pursuing the case.

195 (d) No action may be brought under this section more than 2 years after the

196 discrimination or retaliation with respect to which the action is brought.

197 (e) For purposes of this subsection:

198 (1) An adverse employment action shall be treated as discrimination or retaliation;

199 and

200 (2) The term 'adverse employment action' includes:

201 (A) The failure to promote an individual or provide any other

202 employment-related benefit for which the individual would otherwise be eligible;

203 (B) An adverse evaluation or decision made in relation to accreditation,

204 certification, credentialing, or licensing of the individual; and

205 (C) A personnel action that is adverse to the individual concerned.

206 (f) Nothing in this section shall be construed as:

207 (1) Permitting conduct prohibited under the National Labor Relations Act or

208 under any other Federal, State, or local collective bargaining law; or

209 (2) Preempting, limiting, or modifying a collective bargaining agreement entered

210 into by a hospital.

211 Sec. 9. Fiscal impact statement.

212 The Council adopts the fiscal impact statement in the committee report as the fiscal
213 impact statement required by section 4a of the General Legislative Procedures Act of 1975,
214 approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

215 Sec. 10. Effective date.

216 This act shall take effect following approval by the Mayor (or in the event of veto by the
217 Mayor, action by the Council to override the veto), a 30-day period of Congressional review as
218 provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December
219 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of
220 Columbia Register.