

HOUSE BILL 178

**54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019**

INTRODUCED BY

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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.

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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. "committee" means a nursing staffing committee;

7 B. "critical-access hospital" means a hospital  
8 that:

9 (1) has twenty-five or fewer acute care  
10 inpatient beds;

11 (2) is located more than thirty-five miles  
12 from another hospital;

13 (3) maintains an annual average length of stay  
14 of ninety-six hours or less for acute care patients; and

15 (4) provides emergency care services twenty-  
16 four hours a day, seven days a week;

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

18 D. "hospital" means any general or special hospital  
19 licensed by the department, whether publicly or privately  
20 owned;

21 E. "nurse" means a registered nurse or a licensed  
22 practical nurse;

23 F. "patient abandonment" means a nurse's unilateral  
24 severance of an established nurse-patient relationship without  
25 giving reasonable notice in accordance with hospital policy so

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1 that arrangements can be made for continuation of nursing care  
2 by others;

3 G. "patient census" means the actual number of  
4 patients that occupy beds in a nursing unit and require nursing  
5 care;

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

9 I. "unit" means a hospital nursing unit; and

10 J. "unlicensed assistive personnel" means a  
11 certified nursing assistant, a technician, an aide, a unit  
12 secretary, an orderly or any other unlicensed personnel who  
13 assist in the provision of direct patient care.

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

17 A. sixty percent of the members shall be nurses who  
18 provide direct patient care during at least fifty percent of  
19 their work time but who are not hospital nurse managers or  
20 hospital administrators, at least one of whom provides direct  
21 care in a nurse specialty unit; and

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

24 SECTION 4. [NEW MATERIAL] DUTIES OF COMMITTEE.--A  
25 committee shall:

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

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

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

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

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

15           A. specify the minimum number of nurses and  
16 unlicensed assistive personnel required for each shift on the  
17 unit based upon the level of intensity of care required by  
18 patients and the variability in the number of admissions,  
19 discharges and transfers under existing conditions;

20           B. take into account that critical access hospitals  
21 are regulated by the department of health;

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

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

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1 be temporarily waived.

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

3 A. Nursing staffing levels shall take into  
4 consideration:

5 (1) recommendations from the hospital's chief  
6 nursing officer, direct patient care nurses, unlicensed  
7 assistive personnel, professional nursing organizations and  
8 other appropriate resources as determined by the committee;

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

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

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

18 (5) the ability to meet the needs of the  
19 community being served; and

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

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

24 C. A hospital shall formulate and adopt procedures  
25 for flexibility in nursing staffing levels determined by the

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1 committee during surges and declines in patient census.

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

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

5 A. A nurse may refuse an assignment exclusively  
6 under the following circumstances:

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

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

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

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

16 A. Within one hour of the start of each shift, a  
17 hospital shall conspicuously post a daily report next to posted  
18 patient rights in each of its units that contain the:

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

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

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

25 B. The daily report shall include nurses and

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1 unlicensed assistive personnel working in the unit.

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

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

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

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

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

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

25 C. perform an audit if the information contained in

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1 a quarterly report required of a hospital pursuant to  
2 Subsection C of Section 8 of the Patient Safe Staffing Act  
3 gives rise to a reasonable suspicion that there is a  
4 discrepancy in the report or that an inappropriate staffing  
5 level has occurred;

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

14 E. create a process pursuant to which:

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

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

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

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

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

- 5           A.   a committee or plan;
- 6           B.   the posting or reporting of, or the failure to  
7 post or report, daily nursing staffing level information  
8 required by the Patient Safe Staffing Act; and
- 9           C.   the exercise of the right to refuse an  
10 assignment pursuant to the Patient Safe Staffing Act.

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

19           SECTION 12.   [NEW MATERIAL] NON-EXCLUSIVITY OF OTHER  
20 RIGHTS AND REMEDIES.--The rights and remedies provided for in  
21 the Patient Safe Staffing Act are not exclusive and shall be in  
22 addition to any other rights or remedies provided for in any  
23 other law or available under common law.