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HOUSE BILL 68

54TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2020

INTRODUCED BY

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Elizabeth "Liz" Thomson

AN ACT

RELATING TO HEALTH CARE; ENACTING THE PATIENT SAFE STAFFING
ACT; REQUIRING HOSPITALS TO ESTABLISH NURSING STAFFING
COMMITTEES AND FURTHER REQUIRING HOSPITALS TO IMPLEMENT THE
STAFFING PLANS AND LEVELS DEVELOPED BY THE NURSING STAFFING
COMMITTEES FOR ALL 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; REQUIRING
HOSPITALS TO KEEP ALL RECORDS RELATED TO STAFFING AND NURSING
STAFFING COMMITTEES' RECORDS FOR NO LESS THAN TEN YEARS;
PROVIDING THE DEPARTMENT OF HEALTH WITH THE RESPONSIBILITY OF
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

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1 PROMULGATE RULES TO IMPLEMENT THE PATIENT SAFE STAFFING ACT;
2 REQUIRING THAT ALL RECORDS HELD BY THE DEPARTMENT OF HEALTH
3 RELATED TO HOSPITALS' NURSING STAFFING COMMITTEES AND PLANS
4 DEVELOPED BY NURSING STAFFING COMMITTEES BE CONSIDERED PUBLIC
5 RECORDS UNDER THE LAWS OF NEW MEXICO RELATIVE TO THE INSPECTION
6 OF PUBLIC RECORDS ACT; PROVIDING WHISTLEBLOWER PROTECTION TO
7 EMPLOYEES WHO FILE A GRIEVANCE OR COMPLAINT UNDER THE PATIENT
8 SAFE STAFFING ACT.

9

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

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

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

15 A. "committee" means a nursing staffing committee;

16 B. "department" means the department of health;

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

20 D. "nurse" means a registered nurse or a licensed
21 practical nurse;

22 E. "patient abandonment" means a nurse's unilateral
23 severance of an established nurse-patient relationship without
24 giving reasonable notice in accordance with hospital policy so
25 that arrangements can be made for continuation of nursing care

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1 by others;

2 F. "patient census" means the actual number of
3 patients that occupy beds in a nursing unit and require nursing
4 care, including patients awaiting discharge;

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

8 H. "staffing plan" means the staffing plan
9 developed by the committee;

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

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

15 SECTION 3. [NEW MATERIAL] COMMITTEE REQUIRED.--

16 A. A hospital shall:

17 (1) have a committee, chaired by the director
18 of nursing, with members of the committee appointed as follows:

19 (a) sixty percent of the committee
20 members shall be nurses who provide direct patient care during
21 at least fifty percent of their work time and who are not
22 hospital nurse managers or hospital administrators and at least
23 one of whom provides direct care in a nurse specialty unit.

24 This sixty percent of the committee members shall be appointed
25 by the employee organization legally representing the nurses at

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1 the hospital or, if the nurses are not represented by an
2 employee organization, then the hospital shall provide for a
3 secret ballot process by which nurses who are not deemed to be
4 managers shall elect these committees; and

5 (b) the hospital shall appoint other
6 persons whom it deems qualified to fill the remaining forty
7 percent of the committee slots;

8 (2) charge its committee with developing
9 staffing plans for each of the hospital's units;

10 (3) cause the staffing plans that the
11 committee develops to be implemented;

12 (4) report electronically on an annual basis
13 to the department the staffing plan and supporting
14 documentation and records; and

15 (5) keep and maintain all documents and
16 records related to the staffing and the committee's
17 deliberations and actions for no less than ten years.

18 B. A hospital shall implement any changes to the
19 staffing plan no later than six months after the committee has
20 developed and submitted the changes to the plan to the hospital
21 in accordance with the provisions of Section 4 of the Patient
22 Safe Staffing Act.

23 C. A hospital's director of nursing shall use the
24 staffing plan as the basis for all staffing decisions.

25 SECTION 4. [NEW MATERIAL] DUTIES OF COMMITTEE.--A

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1 committee shall:

2 A. develop, vote upon and submit a staffing plan
3 for each of the hospital units to the hospital within six
4 months after the appointment of the hospital's first appointed
5 committee;

6 B. develop, vote upon and submit to the hospital
7 within six months from the commencement of duties of the
8 committee any subsequent plan or amendment to the current
9 staffing plan;

10 C. select outcome indicators for each unit from
11 among a national database of nursing quality indicators, a
12 federal hospital comparison database, patient satisfaction
13 surveys required under federal law and such other appropriate
14 standards as determined by the committee;

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

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

21 SECTION 5. [NEW MATERIAL] NURSING STAFFING PLAN
22 REQUIREMENTS.--

23 A. Each unit's staffing plan shall:

24 (1) establish staffing levels in accordance
25 with the provisions of Section 6 of the Patient Safe Staffing

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1 Act;

2 (2) specify the minimum number of nurses and
3 unlicensed assistive personnel required for each shift on the
4 unit based upon the patient census, the level of intensity of
5 care required by patients and the variability in the number of
6 admissions, discharges and transfers under existing conditions;

7 (3) ensure that a nurse receives adequate
8 orientation before being assigned to a unit; and

9 (4) specify circumstances, such as a declared
10 state of emergency, under which compliance with the staffing
11 plan may be temporarily waived.

12 B. A committee may take into account the size of
13 the hospital and require the hospital to coordinate cross
14 training for nurses and nursing support staff to be able to
15 cross from one unit to another as the populations of units
16 change.

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

18 A. Nursing staffing levels shall take into
19 consideration:

20 (1) recommendations from the hospital's chief
21 nursing officer, direct patient care nurses, unlicensed
22 assistive personnel, professional nursing organizations and
23 other appropriate resources as determined by the committee;

24 (2) the characteristics of patients in each
25 unit, including patient acuity as well as variability in the

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1 number of discharges, admissions and transfers per shift;

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

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

8 (5) the ability to meet the needs of the
9 community being served; and

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

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

14 C. A hospital shall formulate and adopt procedures
15 for flexibility in nursing staffing levels determined by the
16 committee during surges and declines in patient census.

17 D. A hospital shall not achieve nursing staffing
18 levels by requiring its staff to work overtime.

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

20 A. A nurse may refuse an assignment exclusively
21 under the following circumstances:

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

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

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

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

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

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

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

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

15 B. The daily report shall include nurses and
16 unlicensed assistive personnel working in the unit.

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

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

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

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1 SECTION 9. ~~[NEW MATERIAL]~~ DUTIES OF DEPARTMENT.--The

2 department shall:

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

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

14 C. perform an audit if the information contained in
15 a quarterly report required of a hospital pursuant to Section 8
16 of the Patient Safe Staffing Act gives rise to a reasonable
17 suspicion that there is a discrepancy in the report or that an
18 inappropriate staffing level has occurred;

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

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1 Act;

2 E. create a process pursuant to which:

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

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

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

11 F. promulgate such rules as are necessary to
12 implement and enforce the provisions of the Patient Safe
13 Staffing Act;

14 G. keep all records submitted to the department by
15 hospitals pursuant to Section 3 of the Patient Safe Staffing
16 Act for no less than ten years; and

17 H. maintain all records received pursuant to
18 Section 3 of the Patient Safe Staffing Act for review by the
19 public as provided in the Inspection of Public Records Act.

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

24 A. a committee or staffing plan;

25 B. the posting or reporting of, or the failure to

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1 post or report, daily nursing staffing level information
2 required by the Patient Safe Staffing Act; and

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

5 SECTION 11. [NEW MATERIAL] ACTIONS FOR VIOLATIONS--
6 INJUNCTIVE RELIEF.--The attorney general or a party aggrieved
7 or potentially aggrieved by a violation of the Patient Safe
8 Staffing Act may file suit in the district court of any county
9 for injunctive relief to enforce the provisions of the Patient
10 Safe Staffing Act or department rules if it appears that the
11 department is not enforcing the provisions of the Patient Safe
12 Staffing Act or any department rule promulgated pursuant to
13 that act.

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