



THE HOSPITAL & HEALTHSYSTEM ASSOCIATION OF PENNSYLVANIA

2011-2012 LEGISLATIVE SESSION

SENATE BILL 438 THE HOSPITAL PATIENT PROTECTION ACT

Senate Bill 438 was introduced during the 2011-2012 legislative session and was referred to the Senate Public Health and Welfare Committee on February 7, 2011. The primary sponsor is Senator Daylin Leach (D-Senate District 17).

The proposed legislation can be downloaded from:

<http://www.legis.state.pa.us/cfdocs/billinfo/billinfo.cfm?year=2011&ind=0&body=S&type=B&N=0438>

Senate Bill 438 amends the Health Care Facilities Act and seeks to provide for the establishment of mandatory hospital direct care professional nursing practice standards and professional practice protections. The proposed legislation mandates the adoption of uniform, minimal, numerical, and specific registered nurse-to-patient staffing ratios in hospitals. It also seeks to establish an acuity-based patient classification system. The proposed legislation incorporates whistleblower protections and also imposes penalties on hospitals for non-compliance.

SUMMARY OF KEY PROVISIONS

Patient Advocacy

The proposed legislation outlines that all registered nurses have a duty to act as the patient's advocate and in that capacity the registered nurse shall have:

- During working and off-duty hours, the right to report unsafe practices or violation of policy, regulation, rule or law by other health care professionals or workers at the hospital facility without the fear of being discharged from duty or retaliated against by the health care facility.
- The professional obligation and right to initiate action to improve health care or to change decisions or activities which, in the professional judgment of the direct care registered nurse, are against the interests or wishes of the patient.
- The professional obligation and right to give the patient the opportunity to make informed decisions about health care before it is provided.

Patient Care Assignments

As a condition of licensure, each health care facility must adopt and comply with a written work assignment policy that includes a provision that a direct care nurse may refuse a work assignment. They must disseminate the written policy to all direct care nurses within their facility permitting them to refuse a patient assignment for which the nurse does not have the necessary knowledge, judgment, skills and ability to provide the required care without compromising or jeopardizing the patient's safety.

The work assignment policy is to contain procedures to provide for:

- Reasonable requirements for prior notice to the nurse's supervisor regarding the nurse's request to refuse an assignment and supporting reasons for being relieved of an assignment.
- A process to allow the supervisor to review the nurse's request to be relieved of an assignment.

- A process that permits the nurse to exercise the right to refuse the assignment if the supervisor rejects their request to refuse the assignment without proposing a remedy or the proposed remedy would be inadequate or untimely; the complaint and investigation process with a regulatory agency would be untimely to address the concern; or the employee believes that the assignment or implementation of an order meets conditions justifying refusal.

The proposed legislation further outlines that the written policy shall permit a direct care nurse to assess an order initiated by a physician or legally authorized health professional before implementation to determine if the order:

- Is in the best interests of the patient;
- Was initiated by a person legally authorized to issue the order; and
- In accordance with applicable law and regulation.

The legislation proposes that a nurse who refuses an assignment or implementation of an order under the aforementioned work assignment policy shall not be deemed to have engaged in negligent or incompetent action, patient abandonment or otherwise to have violated applicable nursing law.

Nurse-to-Patient Staffing Plan

The proposed legislation outlines that a written staffing plan shall be developed and implemented for each patient care unit by the chief nursing office or a designee, based on the individual patient care needs determined by an acuity-based patient classification system. The staffing plan shall be documented and posted on the unit for public view on a day-to-day, shift-by-shift basis. The plan shall include:

- Staffing requirements as determined by the system for each unit.
- The actual staff and staff mix provided.
- The variance between required and actual staffing patterns.

Registered Nurse Ratio Requirements

The proposed legislation outlines that:

- Only direct care registered nurses providing direct care shall be included in the ratios.
- Only direct care registered nurses shall relieve other direct care registered nurses during breaks, meals and other routine, expected absences from the unit.
- Only direct care registered nurses shall be assigned to intensive care newborn nursing service units, which specifically require one direct care registered nurse to two or fewer infants at all times.
- In the emergency department, only direct care registered nurse shall be assigned to triage patients, and only direct care registered nurses shall be assigned to critical trauma patients.

Unit or Patient Care Areas Within General, Acute, Critical Access and Specialty Hospitals

The proposed legislation outlines that the staffing plan must incorporate the following direct care nurse-to-patient ratios during one shift:

- One nurse to two patients in the:
 - intensive care unit.
 - critical care unit.
 - neonatal intensive care unit.
 - burn unit.
 - post anesthesia recovery unit.
- One nurse to three patients for:
 - a step-down, intermediate care unit.
 - pediatrics.
 - telemetry.

- One nurse to four patients in:
 - medical/surgical units.
 - presurgical and admissions units or ambulatory surgical units.
 - specialty units.
 - psychiatric units.
- One nurse to five patients in a rehabilitation unit or a skilled nursing facility.

Operating Rooms Within General, Acute, Critical Access and Specialty Hospitals

The proposed legislation outlines that the operating room shall have:

- At least one direct care registered nurse assigned to the duties of the circulating registered nurse and a minimum of one additional person as a scrub assistant for each patient-occupied operating room.
- One nurse to two patients in the post anesthesia recovery unit regardless of the type of anesthesia the patient received.
- One nurse to one patient for patients receiving conscious sedation.

Emergency Departments Within General, Acute, Critical Access and Specialty Hospitals

The proposed legislation outlines that in an emergency department, triage, radio or specialty/flight, registered nurses do not count in the calculation of direct care registered nurse-to-patient ratios. The staffing plan must incorporate the following direct care nurse-to-patient ratios during one shift:

- One nurse to four patients in the emergency department.
- One nurse to two patients for critical care patients.
- One nurse to one patient for critical trauma patients.

Labor and Delivery Suites Within General, Acute, Critical Access and Specialty Hospitals

The proposed legislation outlines that the direct care registered nurse-to-patient ratio in the labor and delivery suite shall be:

- One nurse to one patient for active labor patients and patients with medical or obstetrical complications.
- One nurse to one patient for initiating epidural anesthesia and circulation for cesarean delivery.
- One nurse to two patients for patients in immediate postpartum.
- One nurse to three patients for antepartum patients who are not in active labor.
- One nurse to three mother-baby couplets for patients in a postpartum area.
- For cesarean delivery, the total number of mothers plus infants assigned to one nurse shall never exceed four.
- For multiple births, the total number of mothers plus infants assigned to one nurse shall not exceed six.
- One nurse to four patients for postpartum areas in which the nurse's assignment consists of mothers only.
- One nurse to four patients for postpartum women or postsurgical gynecological patients.
- One nurse to five patients for the well baby nursery.
- One nurse to one patient for unstable newborns and those in the resuscitation period.
- One nurse to four patients for recently born infants.

Acuity-based Patient Classification System

In addition to the direct care registered nurse ratio requirements, the proposed legislation outlines that a hospital shall assign additional nursing staff through the implementation of a valid acuity-based patient classification system for determining nursing care requirements. The additional staff may include licensed practical nurses and certified nursing assistants.

Annual Review of Acuity System

The proposed legislation mandates that an annual review on the reliability of the acuity system for validating staffing requirements be conducted by a committee whose membership includes those unit-specific nurses who provide direct patient care. Members of the committee shall be appointed by the chief nursing officer except where the direct care registered nurses are represented for collective bargaining purposes. In this case, the members of the committee shall be appointed by the authorized collective bargaining agent.

Transparency of Acuity System

The proposed legislation outlines that an acuity-based patient classification system shall be fully transparent in all respects, including:

- Disclosure of detailed documentation of the methodology used by the system to predict nurse staffing.
- Identification of each factor, assumption and value used in applying the methodology.
- An explanation of the scientific and empirical basis for each such assumption and value and certification by an authorized representative of the hospital.

Recordkeeping

The proposed legislation outlines that the hospital shall retain:

- The written staffing plan for a period of two years.
- The actual direct care registered nurse, licensed practical nurse and certified nursing assistant assignments to individual patients by licensure and nonlicensure category.

Documentation to the Department of Health

The required documentation shall be submitted in its entirety to the Department of Health as a mandatory condition of hospital licensure. Certification of the hospital's compliance to implement a valid system used to determine nursing service staffing by the hospital for every shift on every clinical unit in which patients reside and receive care shall be executed by the chief nursing officer.

Penalties for Non-Compliance

The proposed legislation outlines that:

- A civil penalty of not more than \$25,000 for each violation and an additional \$10,000 per nursing unit shift until the violation is corrected shall be imposed on a hospital who has not adopted and implemented an acuity-based patient classification system, has not developed a written nursing care staffing plan for each patient care unit, and who has been found to have violated the required nurse-to-patient ratios.
- A hospital employer found to have violated or interfered with the rights or protections provided for the nurse to serve as a patient advocate shall be subject to a civil penalty of not more than \$25,000 for each violation or occurrence of prohibited conduct.
- Any hospital management, nursing service or medical personnel found to have violated or interfered with the rights or protections provided for the nurse to serve as a patient advocate shall be subject to a civil penalty of not more than \$20,000 for each violation or occurrence of prohibited conduct.

Effective Date

The act shall take effect 60 days following passage.