

MAINE STATE LEGISLATURE

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No. 1538

H.P. 1063

House of Representatives, March 20, 2007

An Act To Increase the Safety of Hospital Patients

Reference to the Committee on Health and Human Services suggested and ordered printed.

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Representative FAIRCLOTH of Bangor.
Cosponsored by Senator PERRY of Penobscot and
Representatives: CONNOR of Kennebunk, Speaker CUMMINGS of Portland, DRISCOLL of
Westbrook, PENDLETON of Scarborough, PERRY of Calais, PINGREE of North Haven,
Senator: STRIMLING of Cumberland.

1 **Be it enacted by the People of the State of Maine as follows:**

2 **Sec. 1. 22 MRSA §1832** is enacted to read:

3 **§1832. Hospital staffing**

4 Staffing in all hospitals licensed under this chapter is subject to the provisions of this
5 section.

6 **1. Definitions.** As used in this section, unless the context otherwise indicates, the
7 following terms have the following meanings.

8 A. "Acuity" means the severity of patient illness, the need for specialized equipment
9 and technology, the intensity of required nursing interventions and the complexity of
10 clinical nursing judgment required to design, implement and evaluate the patient's
11 nursing care plan consistent with professional standards.

12 B. "Patient classification system" or "system" means a standardized set of criteria
13 based on scientific data that acts as a measurement instrument used to predict
14 registered nursing care requirements for each patient based on the acuity of the
15 patient. The system determines the additional number of direct-care registered nurses
16 and other licensed and unlicensed nursing staff the hospital must assign to meet the
17 individual patient needs at all times.

18 C. "Assigned" means that a direct-care registered nurse has responsibility for the
19 provision of care to a particular patient within a nurse's validated competency.

20 D. "Clinical judgment" means the application of a direct-care registered nurse's
21 knowledge, skill and expertise and experience in making independent decisions about
22 patient care.

23 E. "Competence" means the ability of a direct-care registered nurse to integrate and
24 act upon the knowledge, skills, abilities and independent professional judgment that
25 ensure safe and therapeutic patient care.

26 F. "Critical access hospital" means a facility designated pursuant to a Medicare rural
27 hospital flexibility program established by the State and as defined in 42 United
28 States Code, section 1395x(mm).

29 G. "Direct-care registered nurse" means a registered nurse who has accepted the
30 direct, hands-on patient care assignment to implement medical and nursing regimens
31 while exercising independent professional judgment at all times in the interest of the
32 patient.

33 H. "Hospital" means a hospital licensed under chapter 405.

34 I. "Hospital unit" or "clinical unit" means an intensive care unit, critical care unit,
35 burn unit, labor and delivery room, antepartum and postpartum unit, newborn
36 nursery, post-anesthesia service area, emergency department, operating room,
37 pediatric unit, transitional or intermediate care unit, specialty care unit, monitoring
38 unit, general medical care unit, medical surgical unit, psychiatric unit, rehabilitation
39 unit or skilled nursing facility unit.

1 J. "Patient assessment" means the use of critical thinking to interpret, apply, analyze,
2 synthesize and evaluate data obtained through a direct-care registered nurse's
3 observation and communication with others.

4 K. "Professional judgment" means the intellectual process that a direct-care
5 registered nurse exercises in forming an opinion and reaching a clinical decision that
6 is in the patient's best interest, based upon the analysis of data, information and
7 scientific evidence.

8 **2. Minimum, specific and numeric direct-care registered nurse-to-patient**
9 **staffing ratios by hospital unit.** The minimum staffing ratios for general, acute and
10 specialty hospitals for nurse-to-patient care are established in this subsection for direct-
11 care registered nurses as follows.

12 A. The direct-care registered nurse-to-patient ratio in an intensive care unit is 1:2 or
13 fewer at all times.

14 B. The direct-care registered nurse-to-patient ratio for a critical care unit is 1:2 or
15 fewer at all times.

16 C. The direct-care registered nurse-to-patient ratio for a neonatal intensive care unit
17 is 1:2 or fewer at all times.

18 D. The direct-care registered nurse-to-patient ratio for a burn unit is 1:2 or fewer at
19 all times.

20 E. The direct-care registered nurse-to-patient ratio for a transitional, intermediate
21 care unit is 1:3 or fewer at all times.

22 F. An operating room must have at least one direct-care registered nurse assigned to
23 the duties of the circulating registered nurse and a minimum of one additional person
24 as a scrub assistant for each patient-occupied operating room at all times.

25 G. The direct-care registered nurse-to-patient ratio in a post-anesthesia recovery unit
26 is 1:2 or fewer at all times, regardless of the type of anesthesia the patient received.

27 H. The direct-care registered nurse-to-patient ratio for a patient receiving conscious
28 sedation is 1:1 at all times.

29 I. The direct-care registered nurse-to-patient ratio for an emergency department is
30 1:4 or fewer at all times. The direct-care registered nurse-to-patient ratio for critical
31 care patients in the emergency department is 1:2 or fewer at all times. Only direct-
32 care registered nurses may be assigned to critical trauma patients in the emergency
33 department , and a minimum direct-care registered nurse-to-critical trauma patient
34 ratio of 1:1 must be maintained at all times. In an emergency department, triage,
35 radio, specialty and flight registered nurses do not count in the calculation of a direct-
36 care registered nurse-to-patient ratio.

37 J. The direct-care registered nurse-to-patient ratio in the labor and delivery suite of
38 prenatal services is 1:1 at all times for active labor patients and patients with medical
39 or obstetrical complications. The direct-care registered nurse-to-patient ratio is 1:1 at
40 all times for initiating epidural anesthesia and circulation for cesarean delivery. The
41 direct-care registered nurse-to-patient ratio for a patient in immediate postpartum is
42 1:2 or fewer at all times.

1 K. The direct-care registered nurse-to-patient ratio for an antepartum patient who is
2 not in active labor is 1:3 or fewer at all times. The direct-care registered nurse-to-
3 patient ratio for a patient in a postpartum area of the prenatal services is 1:3 mother-
4 baby couplets or fewer at all times. In the event of multiple births, the total number of
5 mothers plus infants assigned to a single direct-care registered nurse may not exceed
6 6. For a postpartum area in which the direct-care registered nurse's assignment
7 consists of mothers only, the direct-care registered nurse-to-patient ratio is 1:4 or
8 fewer at all times. The direct-care registered nurse-to-patient ratio for a postpartum
9 woman or postoperative gynecological patient only is 1:4 or fewer at all times. The
10 well baby nursery direct-care registered nurse ratio is 1:5. The direct-care registered
11 nurse-to-patient ratio for unstable newborns and those in the resuscitation period as
12 assessed by the direct-care registered nurse is 1:1 at all times. The direct-care
13 registered nurse-to-patient ratio for recently born infants is 1:4 or fewer at all times.

14 L. The direct-care registered nurse-to-patient ratio for pediatrics is 1:3 or fewer at all
15 times.

16 M. The direct-care registered nurse-to-patient ratio in the monitoring unit is 1:3 or
17 fewer at all times.

18 N. The direct-care registered nurse-to-patient ratio in a medical surgical unit is 1:4 or
19 fewer at all times. The direct-care registered nurse-to-patient ratio for a presurgical
20 admissions unit or ambulatory surgical unit is 1:4 or fewer at all times.

21 O. The direct-care registered nurse-to-patient ratio in a specialty unit is 1:4 or fewer
22 at all times.

23 P. The direct-care registered nurse-to-patient ratio in a psychiatric unit is 1:4 or
24 fewer at all times.

25 Q. The direct-care registered nurse-to-patient ratio in a rehabilitation unit or a skilled
26 nursing facility is 1:5 or fewer at all times.

27 **3. Hospital unit staffing plans based on individual patient needs as determined**
28 **by valid patient classification system and direct-care professional nurse patient**
29 **assessments.** In addition to the direct-care registered nurse-to-patient ratio requirements
30 in subsection 2, each hospital shall assign additional direct-care registered nurses and
31 other licensed or unlicensed staff by using a patient classification system for determining
32 patient care needs of individual patients that reflects the assessment of patient nursing
33 care requirements made by the assigned direct-care registered nurse and shall provide for
34 shift-by-shift staffing based on those requirements.

35 **4. General Requirements.** Each hospital must provide minimum staffing by direct-
36 care registered nurses in accordance with the general requirements of this section and the
37 clinical unit direct-care registered nurse-to-patient ratios specified in subsection 2.
38 Staffing for patient care tasks not requiring a direct-care registered nurse is not included
39 within these ratios and must be determined pursuant to the patient classification system
40 described in subsection 3.

41 A. A hospital may not assign a direct-care registered nurse to a nursing unit or
42 clinical area unless that hospital and the direct-care registered nurse determine that
43 the nurse has demonstrated current competence in providing care in that area and has

1 also received orientation to that hospital's clinical area sufficient to provide safe,
2 therapeutic and competent care to patients in that area. The policies and procedures of
3 the hospital must contain the hospital's criteria for making this determination.

4 B. Direct-care registered nurse-to-patient ratios represent the maximum number of
5 patients that may be assigned to one direct-care registered nurse at all times.

6 C. There may be no averaging of the number of patients or the total number of
7 direct-care registered nurses on a unit during any one shift or over any period of time.

8 D. Only direct-care registered nurses providing direct patient care may be included
9 in the ratios. Nurse administrators, nurse supervisors, nurse managers, charge nurses
10 and case managers may not be included in the calculation of the direct-care registered
11 nurse-to-patient ratio. Only direct-care registered nurses may relieve other direct-care
12 registered nurses during breaks, meals and other routine, expected absences from a
13 unit.

14 **5. Additional Conditions.** Identifying a unit by a name or term other than those
15 used in subsection 2 does not affect the requirement to staff at the direct-care registered
16 nurse-to-patient ratio identified for the level of intensity or type of care described in this
17 subsection. Patients may be cared for only in units where the level of intensity, type of
18 care and the direct-care registered nurse-to-patient ratio meet the needs of each patient.

19 **6. Restriction.** The following activities are prohibited.

20 A. A hospital may not directly assign any unlicensed personnel to perform functions
21 of a direct-care registered nurse in lieu of care delivered by a licensed registered
22 nurse and may not assign unlicensed personnel to perform functions of a direct-care
23 registered nurse under the supervision of a direct-care registered nurse.

24 B. Unlicensed personnel may not perform tasks that require the clinical assessment,
25 judgment and skill of a licensed direct-care registered nurse, including, without
26 limitation, nursing activities that require nursing assessment and judgment during
27 implementation; physical, psychological and social assessment that require nursing
28 judgment, intervention, referral or follow-up; formulation of a plan of nursing care
29 and evaluation of a patient's response to the care provided; and administration of
30 medications.

31 C. A hospital may not impose mandatory overtime requirements to meet the staffing
32 ratios imposed in subsection 2.

33 **7. Hospital nursing practice standard; direct-care registered nurse professional**
34 **obligations.** A direct-care registered nurse employed in a hospital has a professional
35 obligation to:

36 A. Provide safe, therapeutic and competent nursing care to assigned patients. Before
37 accepting a patient assignment, a direct-care registered nurse must have the necessary
38 knowledge, judgment, skills and ability to provide the required care. It is the
39 responsibility of the direct-care registered nurse to determine whether the nurse is
40 clinically competent to perform the nursing care required by patients in a particular
41 clinical unit or with a particular diagnosis, condition, prognosis and other aspects of
42 nursing care. If the direct-care registered nurse is not clinically competent to

1 perform the care required for a patient to be assigned for nursing care, the nurse
2 should not accept the patient care assignment. Such a refusal to accept a patient care
3 assignment is an exercise of the direct-care registered nurse's duty and the right of
4 patient advocacy;

5 B. Assess each medical order and, prior to acting on the order, determine whether the
6 order is in the best interest of the patient and was initiated by a person legally
7 authorized to initiate such an order;

8 C. Advocate in the exclusive interest of a patient or patients at the hospital. The
9 direct-care registered nurse has the professional obligation and therefore the right to
10 act as the patient's advocate, as circumstances require, by initiating action to improve
11 health care or to change decisions or activities that in the professional judgment of
12 the registered nurse are against the interests or wishes of the patient or by giving the
13 patient the opportunity to make informed decisions about health care before it is
14 provided;

15 D. Perform continuous and ongoing patient assessments based upon the independent
16 professional judgment of the direct-care registered nurse. Patient assessment requires
17 direct observation of the patient's signs and symptoms of illness, reaction to
18 treatment, behavior and physical condition, interpretation of information obtained
19 from the patient and others, including other caregivers on the health team.
20 Assessment requires data collection by the direct-care registered nurse and the
21 analysis, synthesis and evaluation of such data. Only direct-care registered nurses are
22 authorized to perform patient assessments. Licensed vocational nurses may assist
23 direct-care registered nurses in data collection; and

24 E. Plan, implement and evaluate the nursing care provided to each patient. The
25 planning and delivery of patient care must reflect all elements of the nursing process:
26 assessment, nursing diagnosis, planning, intervention, evaluation and, as
27 circumstances require, patient advocacy and must be initiated by the direct-care
28 registered nurse at the time of admission.

29 **8. Protection of patients and direct-care registered nurses.** A hospital may not
30 discharge from duty or otherwise retaliate against a direct-care registered nurse with
31 responsibility for patient care who reports unsafe practices or violations of policy,
32 regulation, rule or law.

33 A direct-care registered nurse responsible for patient care in a hospital has the right of
34 free speech and is protected in the exercise of that right during working hours and during
35 off-duty hours. The right of free speech protected by this section is a necessary incident
36 of the professional nurse's duty and the right of patient advocacy, is essential to protecting
37 the health and safety of hospital patients and is presumed to be in the public interest.

38 A. Protected speech under this subsection includes the reporting internally,
39 externally or publicly of actions, conduct, events, practices or other matters that are
40 believed by the nurse to constitute:

41 (1) A violation of federal, state or local laws or regulations;

42 (2) A breach of applicable codes of professional ethics, including the
43 professional and ethical obligations of direct-care registered nurses;

1 (3) A serious concern of the reporting direct-care registered nurse that the nurse
2 believes is appropriate or required for disclosure in furtherance and support of the
3 nurse's exercise of patient advocacy duties to:

4 (a) Improve health care or change decisions or activities that, in the
5 professional judgment of the direct-care registered nurse, are against the
6 interests or wishes of the patient; or

7 (b) Ensure that the patient is afforded meaningful opportunity to make
8 informed decisions about health care before it is provided; or

9 (4) A concern reported under this paragraph that is intended to aid and support
10 the exercise of patient advocacy duties by a direct-care registered nurse
11 colleague.

12 B. Nothing in this paragraph is intended to authorize disclosure of private and
13 confidential patient information, except when such a disclosure is required by law,
14 compelled by proper legal process, consented to by the patient or provided in
15 confidence to regulatory or accreditation agencies or other government entities for
16 investigatory purposes or pursuant to formal or informal complaints of unlawful or
17 improper practices for purposes of achieving corrective and remedial action.

18 **9. Consumer protection.** A hospital shall daily post in a conspicuous place visible
19 to the public the ratio of direct-care registered nursing staff to patients in each unit and
20 give each patient admitted to the hospital for inpatient care the toll-free telephone number
21 for the Division of Licensing and Regulatory Services within the department to report
22 inadequate staffing or care.

23 **10. Enforcement against a hospital.** A hospital that violates the provisions of this
24 section is subject to enforcement action by the department, including suspension or
25 revocation of license to operate as follows:

26 A. For a violation of the minimum staffing ratios, a fine not to exceed \$25,000 per
27 violation plus \$10,000 per nursing unit shift until the violation is corrected; and

28 B. For a violation of or interference with the rights provided under subsection 8, a
29 civil penalty of not more than \$25,000 for each such violation or occurrence of
30 prohibited conduct.

31 **11. Enforcement against others.** Any hospital management, nursing service or
32 medical personnel found to have violated or interfered with any of the rights or
33 protections provided and guaranteed under this section is subject to a civil penalty of not
34 more than \$25,000 for each violation or occurrence of prohibited conduct.

35 **12. Waiver.** The department shall grant to a critical access hospital a waiver of the
36 requirements of subsections 2 to 5 for one year after the effective date of this Act for the
37 purpose of preparing for compliance with these provisions. Thereafter, the department
38 may grant waivers, after public notice and reasonable opportunity for public comment,
39 based upon express findings supported by a written record that the requested waiver does
40 not jeopardize the health, safety and well-being of patients affected and is needed for
41 increased operational efficiency.

SUMMARY

1
2 This bill imposes minimum staffing requirements for direct-care registered nurse-to-
3 patient staffing on all hospitals with an increase of direct-care registered nurses and other
4 licensed and unlicensed nursing staff required based on the individual acuity of the
5 patients. The bill articulates professional responsibilities for direct-care registered nurses
6 and protections for certain functions and activities. The bill requires daily posting of
7 staffing ratios, requires that patients be given the toll-free telephone number of the
8 Division of Licensing and Regulatory Services within the Department of Health and
9 Human Services and punishes violations of the provisions of this bill by a fine of up to
10 \$25,000 per violation and additional fines until the violation is corrected. Any hospital
11 management, nursing service or medical personnel found to have violated or interfered
12 with these protected rights is subject to penalties.