ASSEMBLY, No. 1791

STATE OF NEW JERSEY
219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

Sponsored by:
Assemblywoman NANCY F. MUNOZ
District 21 (Morris, Somerset and Union)

SYNOPSIS
Requires hospitals to establish nurse staffing committees.

CURRENT VERSION OF TEXT
Introduced Pending Technical Review by Legislative Counsel.
AN ACT concerning nurse staffing committees at hospitals and supplementing Title 26 of the Revised Statutes.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

1. The Legislature finds and declares that:
   a. The State of New Jersey has a substantial interest in promoting quality care and improving the delivery of health care services;
   b. Evidenced-based studies have shown that adequate nurse staffing based on research findings and the intensity of patient care is directly related to positive patient outcomes, such as reducing errors and complications;
   c. Appropriate staffing of hospital personnel, including registered nurses, can also improve staff safety and satisfaction, and reduce incidences of workplace injuries;
   d. Hospitals and nurses share a mutual interest in patient safety initiatives that create a healthy environment for nurses and appropriate care for patients; and
   e. In order to protect patients, support greater retention of registered nurses, and promote adequate nurse staffing, it is in the State’s interest to establish a mechanism whereby nurses and hospital management shall participate in a joint process regarding decisions about nurse staffing.

2. As used in this act:
   "Hospital" means a hospital that is licensed pursuant to P.L.1971, c.136 (C.26:2H-1 et seq.).
   "Intensity" means the level of patient need for nursing care, as determined by the nursing assessment.
   "Nursing personnel" means registered nurses, licensed practical nurses, and unlicensed assistive nursing personnel providing direct patient care.
   "Nurse staffing committee" means the committee established by a hospital pursuant to section 3 of this act.
   "Patient care unit" means any unit or area of the hospital that provides patient care by registered nurses.
   "Skill mix" means the number and relative percentages of registered nurses, licensed practical nurses, and unlicensed assistive personnel among the total number of nursing personnel.
   “Unforeseeable emergency circumstance” means any unforeseen national, State, or municipal emergency; when a hospital disaster plan is activated; any unforeseen disaster or other catastrophic event that substantially affects or increases the need for health care services; or when a hospital is diverting patients to another hospital or hospitals for treatment or the hospital is receiving patients who are from another hospital or hospitals.
3. a. The Department of Health shall require a hospital, as a condition of licensure, to establish a nurse staffing committee, either by creating a new committee or assigning the functions of a nurse staffing committee to an existing committee. At least 55 percent of the members of the nurse staffing committee shall be registered nurses currently providing direct patient care at the hospital, and no more than 45 percent of the members of the committee shall be hospital administrative staff. The selection of the registered nurses shall be according to the collective bargaining agreement, if there is one in effect at the hospital. If there is no applicable collective bargaining agreement, the members of the nurse staffing committee who are registered nurses shall be selected by their peers. The members of the nurse staffing committee who are hospital administrative staff shall be appointed by the hospital’s chief executive officer.

b. Participation in the nurse staffing committee by a hospital employee shall be on scheduled work time and compensated at the appropriate rate of pay. Nurse staffing committee members shall be relieved of all other work duties during meetings of the committee.

c. Primary responsibilities of the nurse staffing committee shall include:

   (1) The development and oversight of an annual patient care unit and shift-based nurse staffing plan, which shall be based on the needs of patients, and which shall be used as the primary component of the staffing budget. The nurse staffing plan shall establish upwardly adjustable minimum ratios of direct care registered nurses to patients for each unit and for each shift of the hospital. Factors to be considered in the development of the nurse staffing plan shall include, but need not be limited to:

   (i) hospital census data, including total numbers of patients on the unit on each shift;
   (ii) hospital admission, discharge, and transfer data;
   (iii) the level of intensity and the nature of the care to be delivered to patients on each shift;
   (iv) skill mix;
   (v) the level of experience and specialty certification or training of nursing personnel providing care;
   (vi) the need for specialized or intensive equipment;
   (vii) the architecture and geography of the patient care unit, including, but not limited to, the placement of patient rooms, treatment areas, nursing stations, medication preparation areas, and equipment;
   (viii) staffing guidelines adopted or published by national nursing professional associations, specialty nursing organizations, and other health professional organizations;
   (ix) the availability of other personnel supporting nursing services on the unit;
   (x) unit and facility level staffing, quality and patient outcomes data, and national comparisons, as available;
(xi) hospital finances and resources; and
(xii) strategies to enable registered nurses to take meal and rest
breaks as required by law or the terms of an applicable collective
bargaining agreement, if any, between the hospital and a representative
of the nursing staff;
(2) A semiannual review of the staffing plan against patient need
and known evidence-based staffing information; and
(3) The review, assessment, and response to staffing variations or
concerns presented to the committee.
d. The nurse staffing plan shall:
(1) not diminish other standards contained in State or federal law
and rules, or the terms of an applicable collective bargaining
agreement, if any, between the hospital and a representative of the
nursing staff;
(2) ensure that a registered nurse shall not be assigned to work in a
particular unit of the hospital without first having established the
ability to provide professional care in such unit; and
(3) provide for exemptions for some or all requirements of the
nurse staffing plan during a state of emergency, as defined in section
23 of P.L.2011, c.19 (C.5:12-45.3), if the hospital is requested or
expected to provide an exceptional level of emergency or other
medical services.
e. The nurse staffing committee shall provide the annual nurse
staffing plan to the hospital’s chief executive officer for review. If this
nurse staffing plan is not adopted by the hospital, the chief executive
officer of the hospital shall provide a written explanation of the
reasons why the plan was not adopted to the committee and either:
identify those elements of the proposed plan being changed prior to
adoption of the plan by the hospital; or prepare and submit to the
committee an alternate annual staffing plan, as adopted by the hospital.
f. One year after the enactment of P.L. , c. (C. )
(pending before the Legislature as this bill), each hospital shall:
(1) submit its adopted nurse staffing plan to the Department of
Health and, thereafter, on an annual basis, and at any time that the plan
is updated; and
(2) implement the adopted nurse staffing plan and assign nursing
personnel to each patient care unit in accordance with the plan.
g. Each nurse staffing committee shall develop a process to:
examine and respond to complaints regarding the hospital’s
implementation of the adopted nurse staffing plan; determine if a
specific complaint is resolved; and dismiss a complaint based on
unsubstantiated data. A registered nurse, a member of the nurse
staffing committee, a hospital staff member, a hospital patient, or any
other person may submit to the Department of Health any complaint
that remains unresolved upon examination by the nurse staffing
committee, as outlined in section 4 of this act, for further investigation.
h. Each hospital shall post, in a public area on each patient care
unit, the adopted nurse staffing plan and the nurse staffing schedule for
that shift on the unit, as well as the relevant clinical staffing levels for
that shift. The nurse staffing plan and current staffing levels shall also
be made available to patients and visitors upon request.

i. A hospital shall not retaliate against or engage in any form of
intimidation of:

   (1) an employee for performing any duties or responsibilities in
connection with a nurse staffing committee; or

   (2) an employee, patient, or other individual who notifies the nurse
staffing committee, the hospital administration, or the Department of
Health of concerns regarding nurse staffing.

4. a. The Commissioner of Health shall establish procedures that
enable persons to file complaints regarding the hospital’s
implementation of the adopted nurse staffing plan; and that provide for
the investigation of such complaints. The department shall only
investigate a complaint that was previously submitted to the nursing
staff committee, and that provides evidence indicating a continuing
pattern of unresolved violations for a minimum of a 60-day continuous
period leading up to receipt of the complaint by the department. The
department shall not investigate a complaint:

   (1) that is determined by a nurse staffing committee to be resolved
or dismissed;

   (2) in the event of unforeseeable emergency circumstances; or

   (3) if a hospital, after consultation with a nurse staffing committee,
documents it has made reasonable efforts to obtain staffing to meet
required assignments, but has been unable to do so.

b. After an investigation, if the department determines that there
has been a violation, the department shall require the hospital to
submit a corrective plan of action within 45 days of the presentation of
findings from the department to the hospital.

   In the event that a hospital fails to submit, or submits but fails to
follow, such a corrective plan of action in response to a violation or
violations found by the department, the department may impose, for all
violations asserted against a hospital at any time, in addition to any
other penalties prescribed under State law, a civil penalty of $1,000
per day until the hospital submits or begins to follow the corrective
plan of action or takes other action agreed to by the department.

The department shall maintain, for public inspection, records of any
civil penalties, administrative actions, or license suspensions or
revocations imposed on hospitals under this section.

c. The department shall submit to the Governor, and to the
Legislature pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1),
a report regarding the implementation of this section within 18 months
of the enactment of P.L. , c. (C. ) (pending before the
Legislature as this bill). This report shall include the number of
complaints submitted to the department, the disposition of these
complaints, the number of investigations conducted, the associated
costs for complaint investigations, and recommendations for any
needed statutory changes.

5. The Commissioner of Health, pursuant to the
“Administrative Procedure Act,” P.L.1968, c.410 (C.52:14B-
1 et seq.), shall adopt rules and regulations as may be necessary to
implement the provisions of this act.

6. This act shall take effect immediately.

STATEMENT

This bill requires hospitals to establish nurse staffing
committees. Specifically, the bill directs the Department of Health
to require a hospital licensed pursuant to P.L.1971, c.136 (C.26:2H-
et seq.), as a condition of licensure, to establish a nurse staffing
committee, either by creating a new committee or assigning the
functions of a nurse staffing committee to an existing committee.
At least 55 percent of the members of the nurse staffing committee
are to be registered nurses currently providing direct patient care at
the hospital, and no more than 45 percent of the members of the
committee are to be hospital administrative staff. The selection of
the registered nurses are to be according to the collective bargaining
agreement, if there is one in effect at the hospital. If there is no
applicable collective bargaining agreement, the members of the nurse
staffing committee who are registered nurses are to be selected by their
peers. The members of the nurse staffing committee who are hospital
administrative staff are to be appointed by the hospital’s chief
executive officer.

Participation in the nurse staffing committee by a hospital employee
is to be on scheduled work time and compensated at the appropriate
rate of pay. Nurse staffing committee members are to be relieved of all
other work duties during meetings of the committee.

Under the bill, the primary responsibilities of the nurse staffing
committee include:

(1) The development and oversight of an annual patient care unit
and shift-based nurse staffing plan, which is to be based on the needs
of patients, and which is to be used as the primary component of the
staffing budget. The nurse staffing plan is to establish upwardly
adjustable minimum ratios of direct care registered nurses to patients
for each unit and for each shift of the hospital. Factors to be
considered in the development of the nurse staffing plan include, but
need not be limited to: hospital census data; hospital admission,
 discharge, and transfer data; the level of intensity and the nature of the
care to be delivered to patients on each shift; skill mix, defined as the
number and relative percentages of registered nurses, licensed
practical nurses, and unlicensed assistive personnel among the total
number of nursing personnel; the level of experience and specialty
certification or training of nursing personnel providing care; the need
for specialized or intensive equipment; the architecture and geography
of the patient care unit; staffing guidelines adopted or published by
health professional organizations; the availability of other personnel
supporting nursing services on the unit; unit and facility level staffing,
quality and patient outcomes data, and national comparisons, as
available; hospital finances and resources; and strategies to enable
registered nurses to take meal and rest breaks as required by law or the
terms of an applicable collective bargaining agreement, if any,
between the hospital and a representative of the nursing staff;

(2) A semiannual review of the staffing plan against patient need
and known evidence-based staffing information; and

(3) The review, assessment, and response to staffing variations or
concerns presented to the committee.

Furthermore, the staffing plan is required to: (1) not diminish other
standards contained in State or federal law and rules, or the terms of an
applicable collective bargaining agreement, if any, between the
hospital and a representative of the nursing staff; (2) ensure that a
registered nurse is not assigned to work in a particular unit of the
hospital without first having established the ability to provide
professional care in such unit; and (3) provide for exemptions for some
or all requirements of the nurse staffing plan during a state of
emergency, as defined in section 23 of P.L.2011, c.19 (C.5:12-45.3), if
the hospital is requested or expected to provide an exceptional level of
emergency or other medical services.

The nurse staffing committee is required provide the annual nurse
staffing plan to the hospital’s chief executive officer for review. If this
nurse staffing plan is not adopted by the hospital, the chief executive
officer of the hospital is to provide a written explanation to the
committee of the reasons why the plan was not adopted. The chief
executive officer must then either: identify those elements of the
proposed plan being changed prior to adoption of the plan by the
hospital; or prepare an alternate annual staffing plan that must be
adopted by the hospital.

One year after the of enactment of the bill, each hospital is to: 1)
submit its adopted nurse staffing plan to the Department of Health and,
thereafter, on an annual basis, and at any time that the plan is updated;
2) implement the adopted nurse staffing plan and assign nursing
personnel to each patient care unit in accordance with the plan.

Each nurse staffing committee is to develop a process to: examine
and respond to a complaint regarding the hospital’s implementation of
the adopted nurse staffing plan; determine if a specific complaint is
resolved; and dismiss a complaint based on unsubstantiated data. A
registered nurse, a member of the nurse staffing committee, a hospital
staff member, a hospital patient, or any other person may submit to the
Department of Health any complaint that remains unresolved upon
examination by the nurse staffing committee for further investigation.
Each hospital is required to post, in a public area on each patient care unit, the nurse staffing plan and the nurse staffing schedule for that shift on the unit, as well as the relevant clinical staffing levels for that shift. The nurse staffing plan and current staffing levels are also to be made available to patients and visitors upon request.

Finally, a hospital is prohibited from retaliating against or engaging in any form of intimidation of: (1) an employee for performing any duties or responsibilities in connection with the nurse staffing committee; or (2) an employee, patient, or other individual who notifies the nurse staffing committee, the hospital administration, or the Department of Health of concerns regarding nurse staffing.

The Commissioner of Health is directed to establish procedures that enable persons to file complaints regarding the hospital’s implementation of the adopted nurse staffing plan; and that provide for the investigation of such complaints. The department is only to investigate a complaint that was previously submitted to the nursing staff committee, and that provides evidence indicating a continuing pattern of unresolved violations for a minimum of a 60-day continuous period leading up to receipt of the complaint by the department. The department is not to investigate a complaint: that is determined by the nurse staffing committee to be resolved or dismissed; in the event of unforeseeable emergency circumstances; or if a hospital, after consultation with a nurse staffing committee, documents it has made reasonable efforts to obtain staffing to meet required assignments, but has been unable to do so. Under the bill, "unforeseeable emergency circumstance” means any unforeseen national, State, or municipal emergency; when a hospital disaster plan is activated; any unforeseen disaster or other catastrophic event that substantially affects or increases the need for health care services; or when a hospital is diverting patients to another hospital or hospitals for treatment or the hospital is receiving patients who are from another hospital or hospitals.

After an investigation, if the department determines that there has been a violation, the department is to require the hospital to submit a corrective plan of action within 45 days of the presentation of findings from the department to the hospital. In the event that a hospital fails to submit, or submits but fails to follow, such a corrective plan of action in response to a violation or violations found by the department, the department may impose, for all violations asserted against a hospital at any time, in addition to any other penalties prescribed under State law, a civil penalty of $1,000 per day until the hospital submits or begins to follow the corrective plan of action or takes other action agreed to by the department. The department is required to maintain, for public inspection records, of any civil penalties, administrative actions, or license suspensions or revocations imposed on hospitals under this section.

Finally, the bill directs the department to submit to the Governor and to the Legislature a report regarding the department’s
investigation of such complaints within 18 months of the enactment of the bill. This report is to include the number of complaints submitted to the department, the disposition of these complaints, the number of investigations conducted, the associated costs for complaint investigations, and recommendations for any needed statutory changes.

It is the sponsor’s belief that the creation of nurse staffing committees will empower direct care nurses to determine the unique and variable needs of their patients to ensure quality care. Evidenced-based studies have shown that adequate nurse staffing based on research findings and the intensity of patient care is directly related to positive patient outcomes and assists in reducing errors and complications. Furthermore, appropriate staffing of hospital personnel improve staff safety and satisfaction, and reduce incidences of workplace injuries.