

Proposed Nurse Staffing Bill Represents Significant New Requirements for Massachusetts Hospitals

On May 22, 2008, the Massachusetts House of Representatives passed HB 4783, “An Act Relative To Patient Safety,” a bill that would impose mandatory patient-to-nurse staffing ratios and other staffing requirements on hospitals throughout the Commonwealth. If passed by the Senate and approved by the Governor, this legislation would create far-reaching reporting and compliance obligations for Massachusetts hospitals. Below is a summary of the significant new requirements and restrictions that passage of this bill would impose on Massachusetts hospitals.

Mandated Patient-to-Nurse Staffing Ratios

The Department of Public Health (“DPH”) would be directed to establish by June 1, 2009 two standards to govern the assignment of nurses to patients in specified hospital clinical units:

- The “Nurse’s Patient Assignment Standards” would set the optimal number of patients to be assigned to each direct-care registered nurse at any one time in a particular unit.
- The “Nurse’s Patient Limit” would establish the maximum number of patients that could be assigned to each direct-care registered nurse at any one time in a particular unit.

Each of these standards would be strictly determined: the number of patients assigned to each nurse could not be averaged, determined with reference to the ratio of the total number of patients to the total number of direct-care registered nurses on a unit, nor factored over a period of time. Non-compliance could trigger enforcement action by DPH as described below. DPH would be required to reevaluate the Nurse’s Patient Assignment Standards and Nurse’s Patient Limits no later than January 2013, and every three years thereafter.

DPH would also be required to develop by January 1, 2009 a “Patient Acuity System” (PAS) or to certify such systems developed or utilized by hospitals. DPH would use these systems to develop the Nurse’s Patient Assignment Standards and the Nurse’s Patient Limits. Hospitals would use them to determine the need for adjustment of direct-care registered nurse staffing as patient acuity changes. Nurse Managers would be responsible for reassigning patients to comply with the PAS within the staffing limits established by DPH, and every registered nurse would be authorized at any time to assess the accuracy of the PAS as applied to the patients in the nurse’s care.

While some leeway is provided in the event of an “overwhelming patient influx,” hospitals would be required to demonstrate that prompt efforts were made to maintain required staffing levels even in this circumstance, and that the mandated limits were reestablished as soon as possible (but no longer than a total of 48 hours after the termination of the triggering event, unless approved by DPH).

Annual Staffing Plans and Staffing Audits

As a condition of licensing by DPH, each hospital would be required to submit annually a prospective staffing plan with a written certification that the plan is sufficient to provide adequate and appropriate delivery of health care services to patients for the ensuing year. Likewise, at the end of each year, each hospital would be required to submit to DPH an audit of the preceding year’s staffing plan.

Restrictions on Use of Non-Licensed Support Personnel

The Act would impose specific restrictions on the ability of hospitals to directly assign certain “nondelegable” functions of licensed registered nurses to unlicensed personnel. Such functions are defined as including, at a minimum: (a) nursing activities that require nursing assessment and judgment during implementation; (b) physical, psychological, and social assessment that requires nursing judgment, intervention, referral or follow-up; (c) formulation of a plan of nursing care and evaluation of the patient’s response to the care provided; (d) administration of medications; and (e) health teaching/health counseling.

Restriction on Mandatory Overtime

The Act also prohibits the use of mandatory overtime, except in cases of public emergencies declared by federal or state government or hospital-wide emergencies. “Overtime” is defined as hours that exceed the number of hours the employer and employee have agreed that the employee would work during the shift or week involved.

Restriction on Nurse Assignments

The Act would also prohibit a hospital from assigning a registered nurse to work in a unit or clinical area of the hospital unless the nurse has “an appropriate orientation” in that clinical area to provide “competent nursing care” and has “demonstrated current competency levels” through accredited institutions and other continuing education providers.

Enforcement Authority

DPH would be given the authority to conduct informal inquiries and formal investigations to determine whether there are patterns of failure to comply with the Nurse’s Patient Limits. DPH would be empowered to impose corrective measures, which may include: (a) requiring a hospital to post official notice of noncompliance in prominent locations within the noncompliant unit for 14 days; (b) imposing additional reporting requirements; (c) revoking the hospital’s license or registration; and (d) closing the particular unit.

A hospital that is repeatedly found in noncompliance could also be fined an amount not more than \$3,000 for each such finding. Hospitals would be able to appeal any measure or fine imposed by DPH to the Division of Administrative Law Appeals, and enforcement would be suspended pending a decision by the Division.

This bill also contains a number of vaguely worded requirements that will likely require further explication by DPH through the regulatory process or by the courts. Some examples include:

- A statement that “failure to comply with the provisions of this section is actionable.” It is unclear whether the Legislature intends by this language to provide patients with a private right of action—in other words, the right to bring private lawsuits—in the event of alleged noncompliance.
- A provision that the setting of the Nurse’s Patient Assignment Standards and the Nurse’s Patient Limits for registered nurses “shall not result in the understaffing or reductions in staffing levels of the health care workforce.” Such a vaguely-worded provision would likely be used by nurses’ unions and others in support of regulatory and enforcement efforts intended to impose particular staffing requirements for such other personnel.

Hospitals would be required to meet the Act’s requirements on or before October 1, 2009 (for teaching hospitals) or October 1, 2011 (for all other hospitals).

Ropes & Gray will continue to provide updates on this important legislation. If you have any questions concerning HB 4783, please contact any member of Ropes & Gray’s [Labor & Employment Department](#).

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