

1 **H. B. 3005**

2
3 (By Delegates Hatfield, Guthrie, Poore, Moore,
4 Marshall, Caputo, Cann, Butcher, Longstreth,
5 D. Poling and Martin)

6 [Introduced February 4, 2011; referred to the
7 Committee on the Judiciary.]

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10 A BILL to amend the Code of West Virginia, 1931, as amended, by
11 adding thereto a new article, designated §16-43-1, §16-43-2
12 and §16-43-3, all relating to ensuring patient safety;
13 defining terms; establishing minimum direct-care registered
14 nurse to patient ratios; providing additional conditions for
15 licensing; prohibiting assignment of unlicensed personnel to
16 perform licensed nurse functions; requiring a full-time
17 registered nurse executive leader; providing for quality
18 assurance; requiring appropriate orientation and competence in
19 clinical area of assignment with documentation thereof to be
20 maintained in personnel files; and exempting critical access
21 hospitals.

22 *Be it enacted by the Legislature of West Virginia:*

23 That the Code of West Virginia, 1931, as amended, be amended
24 by adding thereto a new article, designated §16-43-1, §16-43-2 and
25 §16-43-3, all to read as follows:

26 **ARTICLE 43. ENSURING PATIENT SAFETY ACT.**

1 **§16-43-1. Legislative findings.**

2 Health care services are becoming more complex and it is
3 increasingly difficult for patients to access integrated services.
4 Competent, safe, therapeutic and effective patient care is
5 jeopardized because of staffing changes implemented in response to
6 market-driven managed care. To ensure effective protection of
7 patients in acute care settings, it is essential that qualified
8 direct-care registered professional nurses be accessible and
9 available to meet the individual needs of the patient at all times.
10 To ensure the health and welfare of West Virginia citizens,
11 mandatory hospital direct care professional nursing practice
12 standards and professional practice protections must be established
13 to assure that hospital nursing care is provided in the exclusive
14 interests of patients.

15 **§16-43-2. Ensuring Patient Safety Act.**

16 (a) As used in this article:

17 (1) "Acuity-based patient classification system" means a set
18 of standardized criteria derived from a combination of evidenced-
19 based data and practical previous nursing experience. This criteria
20 serves as a guideline to predict registered nursing care
21 requirements for individual patients dependent on the severity of
22 their illness, need for specialized equipment and technology,
23 intensity of required interventions and the complexity of clinical
24 decision-making and critical thinking necessary to apply, design,
25 implement and evaluate the patient's nursing care plan consistent

1 with professional standards of care. It details the amount of
2 registered nursing care needed, both in number of direct-care
3 registered nurses and skill mix of nursing personnel required on
4 each shift for each patient in a nursing department or unit and is
5 stated in terms that readily can be used and understood by direct-
6 care registered nurses. The acuity system criteria shall take into
7 consideration the patient care services provided not only by
8 registered nurses but also by licensed practical nurses and other
9 health care personnel;

10 (2) "Assessment tool" means a measurement system which compares
11 the registered nurse staffing level in each nursing department or
12 unit against actual patient nursing care requirements in order to
13 review the accuracy of an acuity system;

14 (3) "Board" means the board of Examiners for Registered
15 Professional Nursing;

16 (4) "Charge nurse" means a registered nurse who is assigned to
17 manage the operations of the patient care area for a shift, and the
18 coordination of activities in the patient care area;

19 (5) "CRRT" means continuous renal replacement therapy;

20 (6) "Direct-care registered nurse" means a registered nurse who
21 has accepted direct responsibility and accountability to carry out
22 medical regimens, nursing or other bedside care for patients;

23 (7) "Facility" means a hospital, the teaching hospital of a
24 medical school, any licensed private or state-owned and operated
25 general acute-care hospital, an acute psychiatric hospital, a

1 specialty hospital or any acute-care unit within a state operated
2 facility, but does not include critical access hospitals;

3 (8) "Nursing care" means care which falls within the scope of
4 practice as prescribed by state law or otherwise encompassed within
5 recognized professional standards of nursing practice, including
6 assessment, nursing diagnosis, planning, intervention, evaluation
7 and patient advocacy;

8 (9) "Patient assessment" means the utilization of critical
9 thinking which is the intellectually disciplined process of
10 actively and skillfully interpreting, applying, analyzing and
11 evaluating data obtained through direct observation and
12 communication with others; and

13 (10) "Ratio" means the minimum number of patients to be
14 assigned to each direct-care registered nurse.

15 (b) Each facility, as defined in subsection (a) of this
16 section, is to develop within one year of the effective date of this
17 article, a standardized acuity-based patient classification system
18 as defined in subsection (a) of this section to be used to
19 establish the number of direct-care registered nurses needed to
20 meet patient needs. Each of these facilities shall designate a
21 charge nurse to conduct a patient assessment in order to assign
22 direct-care registered nurses based on acuity level.

23 (c) Each facility shall also incorporate and maintain the
24 following minimum direct-care registered nurse-to-patient ratios:

25 (1) Intensive Care Unit: 1:2;

- 1 (2) Critical Care Unit 1:2 unless Balloon Pump or CRRT 1:1;
2 (3) Neonatal Intensive Care 1:2 unless Balloon Pump or CRRT
3 1:1;
4 (4) New Born Nursery/Neonatal Unit 1:4;
5 (5) Burn Unit 1:2;
6 (6) Step-down/Intermediate Care 1:3;
7 (7) Operating Room:
8 (A) RN as Circulator 1:1; and
9 (B) RN as monitor in moderate sedation cases 2:1;
10 (8) Post Anesthesia Care Unit:
11 (A) Under Anesthesia 1:1; and
12 (B) Post Anesthesia 1:2;
13 (9) Emergency Department 1:3:
14 (A) Emergency Critical Care 1:2; and
15 (B) Emergency Trauma 1:1;
16 (C) The triage, radio, or other specialty registered nurse
17 shall not be counted as part of the number in clause (A) or (B) of
18 this paragraph;
19 (10) Labor and Delivery:
20 (A) Active Labor 1:1;
21 (B) Immediate Postpartum 1:2 (one couplet);
22 (C) Postpartum 1:6 (three couplets);
23 (D) Intermediate Care Nursery 1:4; and
24 (E) Well-Baby Nursery 1:6;
25 (11) Pediatrics 1:4;

1 (12) Psychiatric 1:4;

2 (13) Medical and Surgical 1:4;

3 (14) Telemetry 1:4;

4 (15) Observational/Outpatient Treatment 1:4;

5 (16) Transitional Care 1:5;

6 (17) Rehabilitation Unit 1:5; and

7 (18) Specialty Care Unit 1:4.

8 Any unit not listed above shall be considered a specialty care
9 unit.

10 These ratios constitute the minimum number of direct-care
11 registered nurses. Additional direct-care registered nurses shall
12 be added and the ratio adjusted to ensure direct-care registered
13 nurse staffing in accordance with an approved acuity-based patient
14 classification system. Nothing in this article precludes any
15 facility from increasing the number of direct-care registered
16 nurses, nor do the requirements of this article supersede or replace
17 any requirements otherwise mandated by law, rule or collective
18 bargaining contract so long as the facility meets the minimum
19 requirements outlined.

20 (d) Each facility shall annually submit to the Office of Health
21 Facility Licensure and Certification a prospective staffing plan,
22 as considered appropriate by each charge nurse, together with a
23 written certification that the staffing plan is sufficient to
24 provide adequate and appropriate delivery of health care services
25 to patients for the ensuing year and does all of the following:

1 (1) Meets the minimum direct-care registered nurse-to-patient
2 ratio requirements of subsection (c) of this section;

3 (2) Employs the acuity-based patient classification system for
4 addressing fluctuations in patient acuity levels requiring increased
5 registered nurse staffing levels above the minimums set forth in
6 subsection (c) of this section;

7 (3) Provides for orientation of registered nursing staff to
8 assigned clinical practice areas, including temporary assignments;

9 (4) Includes other unit or department activity such as
10 discharges, transfers and admissions, administrative and support
11 tasks that are expected to be done by direct-care registered nurses
12 in addition to direct nursing care; and

13 (5) Submits the assessment tool used to validate the acuity
14 system relied upon in the plan. As a condition of licensing, each
15 facility annually shall submit to the department an audit of the
16 preceding year's staffing plan as dictated in this subsection. The
17 audit shall compare the staffing plan with measurements of actual
18 staffing as well as measurements of actual acuity for all units
19 within the facility.

20 (e) As a condition of licensing, a facility required to have
21 a staffing plan under this section shall:

22 (1) Prominently post on each unit the daily written nurse
23 staffing plan to reflect the registered nurse-to-patient ratio as
24 a means of providing information and protection; and

25 (2) Provide each patient or family member, or both, with a

1 toll-free hotline number for the Office of Health Facility Licensure
2 and Certification, which may be used to report inadequate registered
3 nurse staffing. A complaint shall cause an investigation by the
4 office to determine whether any violation of law or rule by the
5 facility has occurred.

6 (f) No facility may directly assign any unlicensed personnel
7 to perform nondelegable licensed nurse functions in-lieu of care
8 delivered by a licensed registered nurse. Additionally, unlicensed
9 personnel are prohibited from performing tasks which require the
10 clinical assessment, judgment and skill of a licensed registered
11 nurse. Such functions shall include, but are not limited to:

12 (1) Nursing activities which require nursing assessment and
13 judgment during implementation;

14 (2) Physical, psychological, and social assessment which
15 requires nursing judgment, intervention, referral or follow-up;

16 (3) Formulation of the plan of nursing care and evaluation of
17 the patient's/client's response to the care provided; and

18 (4) Administration of medication.

19 (g) The rules shall require that a full-time registered nurse
20 executive leader be employed by each facility to be responsible for
21 the overall execution of resources to ensure sufficient registered
22 nurse staffing is provided by the facility.

23 (h) The rules shall require that a full-time registered nurse
24 be designated by the facility to be responsible for the overall
25 quality assurance of nursing care as provided by the facility.

1 (i) The rules shall require that a full-time registered nurse
2 be designated by each facility to ensure the overall occupational
3 health and safety of nursing staff employed by the facility.

4 (j) For purposes of compliance with this section no registered
5 nurse may be assigned to a unit or a clinical area within a health
6 facility unless that registered nurse has an appropriate orientation
7 in that clinical area sufficient to provide competent nursing care
8 to the patients in that area, and has demonstrated current
9 competence in providing care in that area. There shall be a
10 written, organized education plan for providing orientation and
11 competency validation for all patient care personnel:

12 (1) All patient care personnel shall complete orientation to
13 the hospital and their assigned patients and patient care unit or
14 units before receiving patient care assignments;

15 (2) All patient care personnel shall be subject to the process
16 of competency validation for their assigned patients and patient
17 care unit or units;

18 (3) Prior to the completion of validation of the competency
19 standards for the patient care unit, patient care assignments shall
20 be subject to the following restrictions:

21 (A) Assignments shall include only those duties and
22 responsibilities for which competency has been validated;

23 (B) A registered nurse who has demonstrated competency for the
24 patient care unit shall be responsible for the nursing care, and
25 shall be assigned as a resource nurse for those registered nurses

1 who have not completed validation for that unit; and

2 (C) Registered nurses may not be assigned total patient
3 responsibility for patient care until all the standards of
4 competency for that unit have been validated;

5 (4) Orientation and competency validation shall be documented
6 in the employee's file and shall be retained for the duration of the
7 individual's employment; and

8 (5) The staff education and training program shall be based on
9 current standards of nursing practice, established standards of
10 staff performance, individual staff needs and needs identified in
11 the quality assurance process.

12 (k) The setting of staffing standards for registered nurses is
13 not to be interpreted as justifying the understaffing of other
14 critical health care workers, including licensed practical nurses
15 and unlicensed assistive personnel. The availability of these other
16 health care workers enables registered nurses to focus on the
17 nursing care functions that only registered nurses, by law, are
18 permitted to perform and thereby helps to ensure adequate staffing
19 levels.

20 **§16-43-3. Exemption.**

21 Critical access hospitals are exempt from the provisions of
22 this article.

NOTE: The purpose of this bill is to ensure patient safety by establishing minimum direct-care registered nurse to patient ratios.

It exempts critical access hospitals from its provisions.

This article is new; therefore, it has been completely underscored.