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H. B. 3010

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(By Delegate Rodighiero)

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[Introduced February 4, 2011; referred to the

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Committee on Health and Human Resources then 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; creating an "acuity-based patient
14 classification system;" directing hospitals to establish an
15 acuity standard; establishing minimum direct-care registered
16 nurse to patient ratios; providing additional conditions for
17 licensing; prohibiting assignment of unlicensed personnel to
18 perform licensed nurse functions; requiring a full-time
19 registered nurse executive leader; providing for quality
20 assurance; requiring appropriate orientation and competence in
21 clinical area of assignment with documentation thereof to be
22 maintained in personnel files; and exempting critical access
23 hospitals.

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

25 That the Code of West Virginia, 1931, as amended, be amended

1 by adding thereto a new article, designated §16-43-1, §16-43-2 and
2 §16-43-3, all to read as follows:

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

4 **§16-43-1. Legislative findings.**

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

18 **§16-43-2. Ensuring Patient Safety Act.**

19 (a) As used in this article:

20 (1) "Acuity-based patient classification system" means a
21 standardized set of criteria based on scientific data that acts as
22 a measurement instrument which predicts registered nursing care
23 requirements for individual patients based on severity of patient
24 illness, need for specialized equipment and technology, intensity
25 of nursing interventions required and the complexity of clinical

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

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

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

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

20 (5) "CRRT" means continuous renal replacement therapy.

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

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

1 general acute-care hospital, an acute psychiatric hospital, a
2 specialty hospital or any acute-care unit within a state operated
3 facility, but does not include critical access hospitals.

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

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

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

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

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

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

- 1 (11) Pediatrics 1:4;
- 2 (12) Psychiatric 1:4;
- 3 (13) Medical and Surgical 1:4;
- 4 (14) Telemetry 1:4;
- 5 (15) Observational/Outpatient Treatment 1:4;
- 6 (16) Transitional Care 1:5;
- 7 (17) Rehabilitation Unit 1:5; and
- 8 (18) Specialty Care Unit 1:4.

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

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

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

1 to patients for the ensuing year and does all of the following:

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

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

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

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

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

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

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

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

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

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

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

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

19 (4) Administration of medication.

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

24 (h) The rules shall require that a full-time registered nurse
25 be designated by the facility to be responsible for the overall

1 quality assurance of nursing care as provided by the facility.

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

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

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

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

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

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

24 (B) A registered nurse who has demonstrated competency for the
25 patient care unit shall be responsible for the nursing care, and

1 shall be assigned as a resource nurse for those registered nurses
2 who have not completed validation for that unit; and

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

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

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

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

21 **§16-43-3. Exemption.**

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

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

ratios. It provides for creating an "acuity-based patient classification system" and exempts critical access hospitals from its provisions. The bill defines terms and directs hospitals to establish an acuity standard. The bill establishes minimum direct-care registered nurse to patient ratios. The bill provides additional conditions for licensing and prohibits assignment of unlicensed personnel to perform licensed nurse functions. The bill also requires a full-time registered nurse executive leader. The bill provides for quality assurance. The bill further requires appropriate orientation and competence in clinical area of assignment with documentation to be maintained in personnel files and exempts critical access hospitals.

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