H. B. 2248

(By Delegate Rodighiero)

[Introduced January 23, 2015; referred to the
Committee on Health and Human Resources then Government Organization.]

A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §16-43-1, §16-43-2 and §16-43-3, all relating to ensuring patient safety; defining terms; creating an "acuity-based patient classification system;" directing hospitals to establish an acuity standard; establishing minimum direct-care registered nurse to patient ratios; providing additional conditions for licensing; prohibiting assignment of unlicensed personnel to perform licensed nurse functions; requiring a full-time registered nurse executive leader; providing for quality assurance; requiring appropriate orientation and competence in clinical area of assignment with documentation thereof to be maintained in personnel files; and exempting critical access hospitals.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 43. ENSURING PATIENT SAFETY ACT.

§16-43-1. Legislative findings.

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

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

(a) As used in this article:

(1) "Acuity-based patient classification system" means a standardized set of criteria based on scientific data that acts as a measurement instrument which predicts registered nursing care requirements for individual patients based on severity of patient illness, need for specialized equipment and technology, intensity of nursing interventions required and the complexity of clinical nursing judgment needed to design, implement and evaluate the patient's nursing care plan consistent with professional standards of care, details the amount of registered nursing care needed, both in number of direct-care registered nurses and skill mix of nursing personnel required on a daily basis for each patient in a nursing department or unit and is stated in terms that readily can be used and understood by direct-care registered nurses. The acuity system criteria shall take into consideration the patient care services provided not only by registered nurses but also by licensed practical nurses and other health care personnel;

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

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

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

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

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

(7) "Facility" means a hospital, the teaching hospital of a medical school, any licensed private or state-owned and operated general acute-care hospital, an acute psychiatric hospital, a specialty hospital or any acute-care unit within a state operated facility, but does not include critical access hospitals.

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

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

(10) "Ratio" means the actual number of patients to be assigned to each direct-care registered

nurse.

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

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

(1) Intensive Care Unit: 1:2;

(2) Critical Care Unit 1:2 unless Balloon Pump or CRRT 1:1;

(3) Neo-natal Intensive Care 1:2 unless Balloon Pump or CRRT 1:1;

(4) New Born Nursery/Neo Natal Unit 1:4;

(5) Burn Unit 1:2;

(6) Step-down/Intermediate Care 1:3;

(7) Operating Room:

(A) RN as Circulator 1:1; and

(B) RN as monitor in moderate sedation cases 2:1;

(8) Post Anesthesia Care Unit:

(A) Under Anesthesia 1:1; and

(B) Post Anesthesia 1:2;

(9) Emergency Department 1:3:

(A) Emergency Critical Care 1:2; and

(B) Emergency Trauma 1:1;

(C) The triage, radio, or other specialty registered nurse shall not be counted as part of the number in clause (A) or (B) of this paragraph;

(10) Labor and Delivery:

(A) Active Labor 1:1;

(B) Immediate Postpartum 1:2 (one couplet);

(C) Postpartum 1:6 (three couplets);

(D) Intermediate Care Nursery 1:4; and

(E) Well-Baby Nursery 1:6;

(11) Pediatrics 1:4;

(12) Psychiatric 1:4;

(13) Medical and Surgical 1:4;

(14) Telemetry 1:4;

(15) Observational/Outpatient Treatment 1:4;

(16) Transitional Care 1:5;

(17) Rehabilitation Unit 1:5; and

(18) Specialty Care Unit 1:4.

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

These ratios constitute the minimum number of direct-care registered nurses. Additional direct-care registered nurses shall be added and the ratio adjusted to ensure direct-care registered nurse staffing in accordance with an approved acuity-based patient classification system. Nothing in this article precludes any facility from increasing the number of direct-care registered nurses, nor

do the requirements of this article supersede or replace any requirements otherwise mandated by law, rule or collective bargaining contract as long as the facility meets the minimum requirements outlined.

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

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

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

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

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

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

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

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

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

(f) A facility may not directly assign any unlicensed personnel to perform nondelegable licensed nurse functions in-lieu of care delivered by a licensed registered nurse. Additionally, unlicensed personnel are prohibited from performing tasks which require the clinical assessment, judgment and skill of a licensed registered nurse. These functions shall include, but are not limited to:

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

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

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

(4) Administration of medication.

(g) The rules shall require that a full-time registered nurse executive leader be employed by each facility to be responsible for the overall execution of resources to ensure sufficient registered

nurse staffing is provided by the facility.

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

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

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

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

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

(3) Prior to the completion of validation of the competency standards for the patient care unit, patient care assignments are subject to the following restrictions:

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

(B) A registered nurse who has demonstrated competency for the patient care unit shall be responsible for the nursing care, and shall be assigned as a resource nurse for those registered nurses who have not completed validation for that unit; and

(C) Registered nurses may not be assigned total patient responsibility for patient care until

all the standards of competency for that unit have been validated;

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

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

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

§16-43-3. Exemption.

Critical access hospitals are exempt from the provisions of 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.