

PLEASE NOTE: Legislative Information **cannot** perform research, provide legal advice, or interpret Maine law. For legal assistance, please contact a qualified attorney.

An Act To Increase the Safety of Hospital Patients

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 22 MRSA §1832 is enacted to read:

§ 1832. Hospital staffing

Staffing in all hospitals licensed under this chapter is subject to the provisions of this section.

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. “Acuity” means the severity of patient illness, the need for specialized equipment and technology, the intensity of required nursing interventions and the complexity of clinical nursing judgment required to design, implement and evaluate the patient's nursing care plan consistent with professional standards.

B. "Patient classification system" or "system" means a standardized set of criteria based on scientific data that acts as a measurement instrument used to predict registered nursing care requirements for each patient based on the acuity of the patient. The system determines the additional number of direct-care registered nurses and other licensed and unlicensed nursing staff the hospital must assign to meet the individual patient needs at all times.

C. “Assigned” means that a direct-care registered nurse has responsibility for the provision of care to a particular patient within a nurse’s validated competency.

D. “Clinical judgment” means the application of a direct-care registered nurse’s knowledge, skill and expertise and experience in making independent decisions about patient care.

E. “Competence” means the ability of a direct-care registered nurse to integrate and act upon the knowledge, skills, abilities and independent professional judgment that ensure safe and therapeutic patient care.

F. “Critical access hospital” means a facility designated pursuant to a Medicare rural hospital flexibility program established by the State and as defined in 42 United States Code, section 1395x(mm).

G. "Direct-care registered nurse" means a registered nurse who has accepted the direct, hands-on patient care assignment to implement medical and nursing regimens while exercising independent professional judgment at all times in the interest of the patient.

H. “Hospital” means a hospital licensed under chapter 405.

I. “Hospital unit” or “clinical unit” means an intensive care unit, critical care unit, burn unit, labor and delivery room, antepartum and postpartum unit, newborn nursery, post-anesthesia service area, emergency department, operating room, pediatric unit, transitional or intermediate care unit, specialty care unit, monitoring unit, general medical care unit, medical surgical unit, psychiatric unit, rehabilitation unit or skilled nursing facility unit.

J. “Patient assessment” means the use of critical thinking to interpret, apply, analyze, synthesize and evaluate data obtained through a direct-care registered nurse's observation and communication with others.

K. “Professional judgment” means the intellectual process that a direct-care registered nurse exercises in forming an opinion and reaching a clinical decision that is in the patient’s best interest, based upon the analysis of data, information and scientific evidence.

2. Minimum, specific and numeric direct-care registered nurse-to-patient staffing ratios by hospital unit. The minimum staffing ratios for general, acute and specialty hospitals for nurse-to-patient care are established in this subsection for direct-care registered nurses as follows.

A. The direct-care registered nurse-to-patient ratio in an intensive care unit is 1:2 or fewer at all times.

B. The direct-care registered nurse-to-patient ratio for a critical care unit is 1:2 or fewer at all times.

C. The direct-care registered nurse-to-patient ratio for a neonatal intensive care unit is 1:2 or fewer at all times.

D. The direct-care registered nurse-to-patient ratio for a burn unit is 1:2 or fewer at all times.

E. The direct-care registered nurse-to-patient ratio for a transitional, intermediate care unit is 1:3 or fewer at all times.

F. An operating room must have at least one direct-care registered nurse assigned to the duties of the circulating registered nurse and a minimum of one additional person as a scrub assistant for each patient-occupied operating room at all times.

G. The direct-care registered nurse-to-patient ratio in a post-anesthesia recovery unit is 1:2 or fewer at all times, regardless of the type of anesthesia the patient received.

H. The direct-care registered nurse-to-patient ratio for a patient receiving conscious sedation is 1:1 at all times.

I. The direct-care registered nurse-to-patient ratio for an emergency department is 1:4 or fewer at all times. The direct-care registered nurse-to-patient ratio for critical care patients in the emergency department is 1:2 or fewer at all times. Only direct-care registered nurses may be assigned to critical trauma patients in the emergency department , and a minimum direct-care registered nurse-to-critical

trauma patient ratio of 1:1 must be maintained at all times. In an emergency department, triage, radio, specialty and flight registered nurses do not count in the calculation of a direct-care registered nurse-to-patient ratio.

J. The direct-care registered nurse-to-patient ratio in the labor and delivery suite of prenatal services is 1:1 at all times for active labor patients and patients with medical or obstetrical complications. The direct-care registered nurse-to-patient ratio is 1:1 at all times for initiating epidural anesthesia and circulation for cesarean delivery. The direct-care registered nurse-to-patient ratio for a patient in immediate postpartum is 1:2 or fewer at all times.

K. The direct-care registered nurse-to-patient ratio for an antepartum patient who is not in active labor is 1:3 or fewer at all times. The direct-care registered nurse-to-patient ratio for a patient in a postpartum area of the prenatal services is 1:3 mother-baby couplets or fewer at all times. In the event of multiple births, the total number of mothers plus infants assigned to a single direct-care registered nurse may not exceed 6. For a postpartum area in which the direct-care registered nurse's assignment consists of mothers only, the direct-care registered nurse-to-patient ratio is 1:4 or fewer at all times. The direct-care registered nurse-to-patient ratio for a postpartum woman or postoperative gynecological patient only is 1:4 or fewer at all times. The well baby nursery direct-care registered nurse ratio is 1:5. The direct-care registered nurse-to-patient ratio for unstable newborns and those in the resuscitation period as assessed by the direct-care registered nurse is 1:1 at all times. The direct-care registered nurse-to-patient ratio for recently born infants is 1:4 or fewer at all times.

L. The direct-care registered nurse-to-patient ratio for pediatrics is 1:3 or fewer at all times.

M. The direct-care registered nurse-to-patient ratio in the monitoring unit is 1:3 or fewer at all times.

N. The direct-care registered nurse-to-patient ratio in a medical surgical unit is 1:4 or fewer at all times. The direct-care registered nurse-to-patient ratio for a presurgical admissions unit or ambulatory surgical unit is 1:4 or fewer at all times.

O. The direct-care registered nurse-to-patient ratio in a specialty unit is 1:4 or fewer at all times.

P. The direct-care registered nurse-to-patient ratio in a psychiatric unit is 1:4 or fewer at all times.

Q. The direct-care registered nurse-to-patient ratio in a rehabilitation unit or a skilled nursing facility is 1:5 or fewer at all times.

3. Hospital unit staffing plans based on individual patient needs as determined by valid patient classification system and direct-care professional nurse patient assessments. In addition to the direct-care registered nurse-to-patient ratio requirements in subsection 2, each hospital shall assign additional direct-care registered nurses and other licensed or unlicensed staff by using a patient classification system for determining patient care needs of individual patients that reflects the assessment of patient nursing care requirements made by the assigned direct-care registered nurse and shall provide for shift-by-shift staffing based on those requirements.

4. General Requirements. Each hospital must provide minimum staffing by direct-care registered nurses in accordance with the general requirements of this section and the clinical unit direct-care registered nurse-to-patient ratios specified in subsection 2. Staffing for patient care tasks not requiring a direct-care registered nurse is not included within these ratios and must be determined pursuant to the patient classification system described in subsection 3.

A. A hospital may not assign a direct-care registered nurse to a nursing unit or clinical area unless that hospital and the direct-care registered nurse determine that the nurse has demonstrated current competence in providing care in that area and has also received orientation to that hospital's clinical area sufficient to provide safe, therapeutic and competent care to patients in that area. The policies and procedures of the hospital must contain the hospital's criteria for making this determination.

B. Direct-care registered nurse-to-patient ratios represent the maximum number of patients that may be assigned to one direct-care registered nurse at all times.

C. There may be no averaging of the number of patients or the total number of direct-care registered nurses on a unit during any one shift or over any period of time.

D. Only direct-care registered nurses providing direct patient care may be included in the ratios. Nurse administrators, nurse supervisors, nurse managers, charge nurses and case managers may not be included in the calculation of the direct-care registered nurse-to-patient ratio. Only direct-care registered nurses may relieve other direct-care registered nurses during breaks, meals and other routine, expected absences from a unit.

5. Additional Conditions. Identifying a unit by a name or term other than those used in subsection 2 does not affect the requirement to staff at the direct-care registered nurse-to-patient ratio identified for the level of intensity or type of care described in this subsection. Patients may be cared for only in units where the level of intensity, type of care and the direct-care registered nurse-to-patient ratio meet the needs of each patient.

6. Restriction. The following activities are prohibited.

A. A hospital may not directly assign any unlicensed personnel to perform functions of a direct-care registered nurse in lieu of care delivered by a licensed registered nurse and may not assign unlicensed personnel to perform functions of a direct-care registered nurse under the supervision of a direct-care registered nurse.

B. Unlicensed personnel may not perform tasks that require the clinical assessment, judgment and skill of a licensed direct-care registered nurse, including, without limitation, nursing activities that require nursing assessment and judgment during implementation; physical, psychological and social assessment that require nursing judgment, intervention, referral or follow-up; formulation of a plan of nursing care and evaluation of a patient's response to the care provided; and administration of medications.

C. A hospital may not impose mandatory overtime requirements to meet the staffing ratios imposed in subsection 2.

7. Hospital nursing practice standard; direct-care registered nurse professional obligations. A direct-care registered nurse employed in a hospital has a professional obligation to:

A. Provide safe, therapeutic and competent nursing care to assigned patients. Before accepting a patient assignment, a direct-care registered nurse must have the necessary knowledge, judgment, skills and ability to provide the required care. It is the responsibility of the direct-care registered nurse to determine whether the nurse is clinically competent to perform the nursing care required by patients in a particular clinical unit or with a particular diagnosis, condition, prognosis and other aspects of nursing care. If the direct-care registered nurse is not clinically competent to perform the care required for a patient to be assigned for nursing care, the nurse should not accept the patient care assignment. Such a refusal to accept a patient care assignment is an exercise of the direct-care registered nurse's duty and the right of patient advocacy;

B. Assess each medical order and, prior to acting on the order, determine whether the order is in the best interest of the patient and was initiated by a person legally authorized to initiate such an order;

C. Advocate in the exclusive interest of a patient or patients at the hospital. The direct-care registered nurse has the professional obligation and therefore the right to act as the patient's advocate, as circumstances require, by initiating action to improve health care or to change decisions or activities that in the professional judgment of the registered nurse are against the interests or wishes of the patient or by giving the patient the opportunity to make informed decisions about health care before it is provided;

D. Perform continuous and ongoing patient assessments based upon the independent professional judgment of the direct-care registered nurse. Patient assessment requires direct observation of the patient's signs and symptoms of illness, reaction to treatment, behavior and physical condition, interpretation of information obtained from the patient and others, including other caregivers on the health team. Assessment requires data collection by the direct-care registered nurse and the analysis, synthesis and evaluation of such data. Only direct-care registered nurses are authorized to perform patient assessments. Licensed vocational nurses may assist direct-care registered nurses in data collection; and

E. Plan, implement and evaluate the nursing care provided to each patient. The planning and delivery of patient care must reflect all elements of the nursing process: assessment, nursing diagnosis, planning, intervention, evaluation and, as circumstances require, patient advocacy and must be initiated by the direct-care registered nurse at the time of admission.

8. Protection of patients and direct-care registered nurses. A hospital may not discharge from duty or otherwise retaliate against a direct-care registered nurse with responsibility for patient care who reports unsafe practices or violations of policy, regulation, rule or law.

A direct-care registered nurse responsible for patient care in a hospital has the right of free speech and is protected in the exercise of that right during working hours and during off-duty hours. The right of free speech protected by this section is a necessary incident of the professional nurse's duty and the right of patient advocacy, is essential to protecting the health and safety of hospital patients and is presumed to be in the public interest.

A. Protected speech under this subsection includes the reporting internally, externally or publicly of actions, conduct, events, practices or other matters that are believed by the nurse to constitute:

(1) A violation of federal, state or local laws or regulations;

(2) A breach of applicable codes of professional ethics, including the professional and ethical obligations of direct-care registered nurses;

(3) A serious concern of the reporting direct-care registered nurse that the nurse believes is appropriate or required for disclosure in furtherance and support of the nurse's exercise of patient advocacy duties to:

(a) Improve health care or change decisions or activities that, in the professional judgment of the direct-care registered nurse, are against the interests or wishes of the patient; or

(b) Ensure that the patient is afforded meaningful opportunity to make informed decisions about health care before it is provided; or

(4) A concern reported under this paragraph that is intended to aid and support the exercise of patient advocacy duties by a direct-care registered nurse colleague.

B. Nothing in this paragraph is intended to authorize disclosure of private and confidential patient information, except when such a disclosure is required by law, compelled by proper legal process, consented to by the patient or provided in confidence to regulatory or accreditation agencies or other government entities for investigatory purposes or pursuant to formal or informal complaints of unlawful or improper practices for purposes of achieving corrective and remedial action.

9. Consumer protection. A hospital shall daily post in a conspicuous place visible to the public the ratio of direct-care registered nursing staff to patients in each unit and give each patient admitted to the hospital for inpatient care the toll-free telephone number for the Division of Licensing and Regulatory Services within the department to report inadequate staffing or care.

10. Enforcement against a hospital. A hospital that violates the provisions of this section is subject to enforcement action by the department, including suspension or revocation of license to operate as follows:

A. For a violation of the minimum staffing ratios, a fine not to exceed \$25,000 per violation plus \$10,000 per nursing unit shift until the violation is corrected; and

B. For a violation of or interference with the rights provided under subsection 8, a civil penalty of not more than \$25,000 for each such violation or occurrence of prohibited conduct.

11. Enforcement against others. Any hospital management, nursing service or medical personnel found to have violated or interfered with any of the rights or protections provided and guaranteed under this section is subject to a civil penalty of not more than \$25,000 for each violation or occurrence of prohibited conduct.

12. Waiver. The department shall grant to a critical access hospital a waiver of the requirements of subsections 2 to 5 for one year after the effective date of this Act for the purpose of preparing for compliance with these provisions. Thereafter, the department may grant waivers, after public notice and reasonable opportunity for public comment, based upon express findings supported by a written record that the requested waiver does not jeopardize the health, safety and well-being of patients affected and is needed for increased operational efficiency.

SUMMARY

This bill imposes minimum staffing requirements for direct-care registered nurse-to-patient staffing on all hospitals with an increase of direct-care registered nurses and other licensed and unlicensed nursing staff required based on the individual acuity of the patients. The bill articulates professional responsibilities for direct-care registered nurses and protections for certain functions and activities. The bill requires daily posting of staffing ratios, requires that patients be given the toll-free telephone number of the Division of Licensing and Regulatory Services within the Department of Health and Human Services and punishes violations of the provisions of this bill by a fine of up to \$25,000 per violation and additional fines until the violation is corrected. Any hospital management, nursing service or medical personnel found to have violated or interfered with these protected rights is subject to penalties.