

A BILL

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

Councilmember Mary M. Cheh introduced the following bill, which was referred to the Committee on \_\_\_\_\_.

To establish safe nurse staffing levels at hospitals in the District of Columbia, and for other purposes.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Nurse Safe Staffing Act of 2013".

Sec. 2. Definitions.

The term:

(1) "Declared state of emergency" means an officially designated state of emergency that has been declared by the Federal Government, the Mayor, or the Director, but does not include a state of emergency that results from a labor dispute in the health care industry or consistent understaffing.

(2) "Director" means the Director of the Department of Health.

(3) "Registered nurse" means an individual who has been granted a license to practice as a registered nurse pursuant to D.C. Code § D.C. Code § 3-2301.01.

(4) "Shift" means a scheduled set of hours or duty period to be worked at a hospital.

(5) "Unit" means, with respect to a hospital, an organizational department or separate geographic area of a hospital, including a burn unit, a labor and delivery room, a post-anesthesia service area, an emergency department, an operating room, a pediatric unit, a stepdown or intermediate care unit, a specialty care unit, a telemetry unit, a general medical care unit, a subacute care unit, and a transitional inpatient care unit.

Sec. 3. Establishment of Safe Nurse Staffing Levels

(a) Each hospital in the District shall implement a hospital-wide staffing plan for nursing services furnished in the hospital.

(b) The hospital-wide staffing plan for nursing services implemented by a hospital pursuant to subsection (a) shall:

1 (1) Be developed by the hospital nurse staffing committee established under  
2 subsection (c) of this section; and

3 (2) Require that an appropriate number of registered nurses provide direct patient  
4 care in each unit and on each shift of the hospital to ensure staffing levels that:

5 (A) Address the unique characteristics of the patients and hospital units;  
6 and

7 (B) Result in the delivery of safe, quality patient care, consistent with the  
8 requirements under subsection (d) of this section.

9 (c) Each hospital in the District shall establish a hospital nurse staffing committee.

10 (1) The Committee shall include:

11 (A) Registered nurses, who shall comprise at least 55% of the Committee,  
12 who provide direct patient care and who are neither hospital nurse managers nor part of the  
13 hospital administration staff;

14 (B) Members who are hospital nurse managers;

15 (C) At least 1 registered nurse who provides direct care from each nurse  
16 specialty or unit of the hospital; and

17 (D) Such other personnel of the hospital as the hospital determines to be  
18 appropriate.

19 (2) The Committee shall:

20 (A) Develop a hospital-wide staffing plan for nursing services furnished in  
21 the hospital consistent with the requirements under subsection (d) of this section;

22 (B) Conduct regular, ongoing monitoring of the implementation of the  
23 hospital-wide staffing plan for nursing services furnished in the hospital;

24 (C) Carry out evaluations of the hospital-wide staffing plan for nursing  
25 services at least annually;

26 (D) Make such modifications to the hospital-wide staffing plan for nursing  
27 services as may be appropriate;

28 (E) Develop policies and procedures for overtime requirements of  
29 registered nurses providing direct patient care and for appropriate time and manner of relief of  
30 such registered nurses during routine absences; and

31 (F) Carry out such additional duties as the Committee determines to be  
32 appropriate.

33 (d) A hospital-wide staffing plan for nursing services shall:

34 (1) Be based upon input from the registered nurse staff of the hospital who  
35 provide direct patient care or their exclusive representatives, as well as the chief nurse executive;

36 (2) Be based upon the number of patients and the level and variability of intensity  
37 of care to be provided to those patients, with appropriate consideration given to admissions,  
38 discharges, and transfers during each shift;

39 (3) Take into account contextual issues affecting nurse staffing and the delivery of  
40 care, including architecture and geography of the environment and available technology;

41 (4) Take into account the level of education, training, and experience of those  
42 registered nurses providing direct patient care;

43 (5) Take into account the staffing levels and services provided by other health  
44 care personnel associated with nursing care, such as certified nurse assistants, licensed vocational  
45 nurses, licensed psychiatric technicians, nursing assistants, aides, and orderlies;

1 (6) Take into account staffing levels recommended by specialty nursing  
2 organizations;

3 (7) Establish adjustable minimum numbers of registered nurses based upon an  
4 assessment by registered nurses of the level and variability of intensity of care required by  
5 patients under existing conditions;

6 (8) Take into account unit and facility level staffing, quality and patient outcome  
7 data, and national comparisons, as available;

8 (9) Ensure that a registered nurse shall not be assigned to work in a particular unit  
9 of the hospital without first having established the ability to provide professional care in such  
10 unit; and

11 (10) Provide for exemptions from some or all requirements of the hospital-wide  
12 staffing plan for nursing services during a declared state of emergency (as defined in subsection  
13 (l)(1)) if the hospital is requested or expected to provide an exceptional level of emergency or  
14 other medical services.

15 (e) A hospital-wide staffing plan for nursing services may not utilize any minimum  
16 number of registered nurses as an upper limit on the nurse staffing of the hospital to which such  
17 minimum number applies.

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19 Sec. 4. Reporting and Release to Public of Certain Staffing Information.

20 (a) Each hospital shall:

21 (1) Post daily for each shift, in a clearly visible place, a document that specifies in  
22 a uniform manner the current number of licensed and unlicensed nursing staff directly  
23 responsible for patient care in each unit of the hospital, identifying specifically the number of  
24 registered nurses;

25 (2) Upon request, make available to the public:

26 (A) The nursing staff information for the hospital;

27 (B) A detailed written description of the hospital-wide staffing plan  
28 implemented by the hospital pursuant to Section 4; and

29 (C) Not later than 90 days after the date on which an evaluation is carried  
30 out by the Committee under Section 4, a copy of such evaluation;

31 (3) Not less frequently than quarterly, submit to the Director the nursing staff  
32 information described in Section 4 through electronic data submission.

33 (b) The Director shall make the information submitted pursuant to subsection (a)(3) of  
34 this section publicly available in a comprehensible format on its website.

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36 Sec. 5. Recordkeeping; collection and reporting of quality data; evaluation.

37 (a) Each hospital shall maintain for a period of at least 3 years (or, if longer, until the  
38 conclusion of any pending enforcement activities) such records as the Director deems necessary  
39 to determine whether the hospital has implemented a hospital-wide staffing plan for nursing  
40 services pursuant to Section 4.

41 (b) The Director shall require the collection, aggregation, maintenance, and reporting of  
42 quality data relating to nursing services furnished by each hospital.

43 (c) The Director shall use only quality measures for nursing-sensitive care that are  
44 endorsed by the consensus-based entity with a contract under section 1890(a).

45 (d) A hospital may enter into agreements with third-party entities that have demonstrated  
46 expertise in the collection and submission of quality data on nursing services to collect,

1 aggregate, maintain, and report the quality data of the hospital. Nothing in this section shall be  
2 construed to excuse or exempt a hospital that has entered into an agreement described in such  
3 clause from compliance with requirements for quality data collection, aggregation, maintenance,  
4 and reporting imposed under this paragraph.

5 (e) The Director shall make the data submitted pursuant to subsection (a) publicly  
6 available, including by publication on its website.

7 (f) Data made available to the public under subsection (a) shall be presented in a clearly  
8 understandable format that permits consumers of hospital services to make meaningful  
9 comparisons among hospitals, including concise explanations in plain English of how to interpret  
10 the data, of the difference in types of nursing staff, of the relationship between nurse staffing  
11 levels and quality of care, and of how nurse staffing may vary based on patient case mix.

12 (g) The Director shall establish a process under which hospitals may review data  
13 submitted to the Director pursuant to this subsection to correct errors, if any, contained in that  
14 data submission before making the data available to the public.

15 (h) The Director shall provide for the analysis of quality data collected from hospitals in  
16 order to evaluate the effect of hospital-wide staffing plans for nursing services on:

17 (1) Patient outcomes that are nursing sensitive (such as pressure ulcers, fall  
18 occurrence, falls resulting in injury, length of stay, and central line catheter infections); and

19 (2) Nursing workforce safety and retention (including work-related injury, staff  
20 skill mix, nursing care hours per patient day, vacancy and voluntary turnover rates, overtime  
21 rates, use of temporary agency personnel, and nurse satisfaction).

## 22 Sec. 6. Refusal of assignment.

23 (a) A nurse may refuse to accept an assignment as a nurse in a hospital, or in a unit of a  
24 hospital, if:

25 (1) The assignment is in violation of the hospital-wide staffing plan for nursing  
26 services implemented pursuant to subsection (a); or

27 (2) The nurse is not prepared by education, training, or experience to fulfill the  
28 assignment without compromising the safety of any patient or jeopardizing the license of the  
29 nurse.

## 30 Sec. 7. Enforcement.

31 (a) The Director shall enforce the requirements and prohibitions of this section in  
32 accordance with the succeeding provisions of this subsection.

33 (b) The Director shall establish procedures under which:

34 (1) Any person may file a complaint that a hospital has violated a requirement of  
35 or a prohibition under this section; and

36 (2) Such complaints are investigated by the Director.

37 (c) Except as provided in paragraph (5), if the Director determines that a hospital has  
38 violated a requirement of this act, the Director:

39 (1) Shall require the hospital to establish a corrective action plan to prevent the  
40 recurrence of such violation; and

41 (2) May impose civil money penalties under subsection (d).

42 (d) In addition to any other penalties prescribed by law, the Director may impose a civil  
43 money penalty of not more than \$10,000 for each knowing violation of a requirement of this  
44 section, except that the Director shall impose a civil money penalty of more than \$10,000 for  
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1 each such violation in the case of a hospital that the Director determines has a pattern or practice  
2 of such violations (with the amount of such additional penalties being determined in accordance  
3 with a schedule or methodology specified in regulations).

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5 Sec. 8. Whistleblower protections.

6 (a) A hospital shall not discriminate or retaliate in any manner against any patient or  
7 employee of the hospital because that patient or employee, or any other person, has presented a  
8 grievance or complaint, or has initiated or cooperated in any investigation or proceeding of any  
9 kind, relating to:

10 (1) The hospital-wide staffing plan for nursing services developed and  
11 implemented under this section; or

12 (2) Any right, other requirement or prohibition under this section, including a  
13 refusal to accept an assignment described in subsection (f).

14 (b) An employee of a hospital who has been discriminated or retaliated against in  
15 employment in violation of this subsection may initiate judicial action in a United States district  
16 court and shall be entitled to reinstatement, reimbursement for lost wages, and work benefits  
17 caused by the unlawful acts of the employing hospital. Prevailing employees are entitled to  
18 reasonable attorney's fees and costs associated with pursuing the case.

19 (c) A patient who has been discriminated or retaliated against in violation of this  
20 subsection may initiate judicial action in a United States district court. A prevailing patient shall  
21 be entitled to liquidated damages of \$5,000 for a violation of this statute in addition to any other  
22 damages under other applicable statutes, regulations, or common law. Prevailing patients are  
23 entitled to reasonable attorney's fees and costs associated with pursuing the case.

24 (d) No action may be brought under this section more than 2 years after the  
25 discrimination or retaliation with respect to which the action is brought.

26 (e) For purposes of this subsection:

27 (1) An adverse employment action shall be treated as discrimination or retaliation;  
28 and

29 (2) The term 'adverse employment action' includes:

30 (A) The failure to promote an individual or provide any other  
31 employment-related benefit for which the individual would otherwise be eligible;

32 (B) An adverse evaluation or decision made in relation to accreditation,  
33 certification, credentialing, or licensing of the individual; and

34 (C) A personnel action that is adverse to the individual concerned.

35 (f) Nothing in this section shall be construed as:

36 (1) Permitting conduct prohibited under the National Labor Relations Act or  
37 under any other Federal, State, or local collective bargaining law; or

38 (2) Preempting, limiting, or modifying a collective bargaining agreement entered  
39 into by a hospital.

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42 Sec. 9. Fiscal impact statement.

43 The Council adopts the fiscal impact statement in the committee report as the fiscal  
44 impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act,  
45 approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-106.02(c)(3)).

1           Sec. 10. Effective date.

2           This act shall take effect following approval by the Mayor (or in the event of veto by the  
3 Mayor, action by the Council to override the veto), a 30-day period of Congressional review as  
4 provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December  
5 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of  
6 Columbia Register.