

An Act to Address Unsafe Staffing of Nurses and Improve Patient Care

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

Sec. 1. 22 MRSA c. 404-A is enacted to read:

CHAPTER 404-A

HEALTH CARE FACILITY STAFFING

§1791. Short title

This chapter may be known and cited as "the Maine Quality Care Act."

§1792. Application and construction

1. Application. All health care facilities are subject to the requirements of this chapter.

2. Construction. This chapter may not be construed to:

A. Change the scope of practice of registered nurses licensed under Title 32, chapter 31, subchapter 3;
or

B. Provide an exemption from the minimum staffing requirements of direct-care registered nurses if the patient condition or patient care unit name is different from the term used in this chapter but the services provided are substantially similar.

§1793. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Ancillary staff person. "Ancillary staff person" means any person who supports patient care services in a health care facility through regular, delegated tasks performed under the coordination of a direct-care registered nurse for the delivery of safe, therapeutic and effective patient care.

2. Competency. "Competency" means the ability of a direct-care registered nurse to integrate and act on the nurse's knowledge, skills, professional judgment and experience to ensure safe, therapeutic and effective care to a specific patient population and for the severity of illness in each patient care unit.

3. Declared state of emergency. "Declared state of emergency" means an emergency declared by an authorized person within federal, state or local government relating to circumstances that are unpredictable and unavoidable, affect the delivery of medical care and require an immediate or exceptional level of emergency or other medical services at a particular health care facility. "Declared state of emergency" does not include an emergency relating to a labor dispute in the health care industry or consistent understaffing in a health care facility.

4. Direct-care registered nurse. "Direct-care registered nurse" means a registered nurse licensed under Title 32, chapter 31, subchapter 3 who is primarily responsible for providing direct, in-person, hands-on patient care in a health care facility by engaging in the nursing process within the nurse's scope of practice while exercising professional judgment in the best interests of the patient at all times.

5. Health care facility. "Health care facility" means a hospital licensed under chapter 405, a freestanding emergency department or an ambulatory surgical facility licensed under chapter 405.

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6. Patient care unit. "Patient care unit" means any area of a health care facility in which a patient receives care.

7. Professional judgment. "Professional judgment" means the application of a direct-care registered nurse's knowledge, expertise and experience and the nurse's assessment of a patient, data, information and scientific evidence to understand the problems, issues or concerns of a patient, to ensure safe, therapeutic and effective patient care and to make independent decisions about a patient's care, including whether the assignment of ancillary staff persons is appropriate.

§1794. Minimum staffing requirements of direct-care registered nurses

Except as provided in section 1795, a health care facility shall assign at least the number of direct-care registered nurses at all times during every shift consistent with the minimum requirements established in this section and at no time may a health care facility assign fewer than 2 direct-care registered nurses in a patient care unit.

1. Requirements. A health care facility shall assign a direct-care registered nurse to no more than:

A. One patient when:

- (1) The patient is receiving critical care or intensive care; or
- (2) The nurse is assigned to a patient care unit, other than a unit providing emergency services, that receives patients requiring critical care or intensive care, including, but not limited to, a critical care unit, an intensive care unit or a patient care unit with neonatal intensive care or pediatric intensive care patients;

B. One patient when:

- (1) The patient is in an operating room; or
- (2) The nurse is assigned to an operating room.

The health care facility shall assign a minimum of one scrub assistant for each patient in an operating room in addition to the assigned direct-care registered nurse;

C. One patient when the patient is receiving conscious sedation;

D. One patient when:

- (1) The patient is receiving postanesthesia care; or
- (2) The nurse is assigned to a patient care unit that receives patients who require postanesthesia care, including, but not limited to, a pediatric postanesthesia care unit;

E. Three patients when:

- (1) The patients are receiving step-down or intermediate care; or
- (2) The nurse is assigned to a patient care unit that receives patients requiring step-down or intermediate care, including, but not limited to, a step-down or intermediate care unit;

F. Three patients when:

- (1) The patients are receiving emergency medical services and do not require critical care or trauma services; or
- (2) The nurse is assigned to a patient care unit that receives patients requiring emergency medical services, including, but not limited to, an emergency department or emergency room;

G. One patient when the patient is receiving emergency services and requires critical care;

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- H. One patient when the patient is receiving emergency services and requires trauma services;
- I. Three patients when the patients are antepartum and not in active labor;
- J. Two patients when the patients are antepartum and require continuous fetal monitoring;
- K. One patient when the nurse is assigned to initiate the patient for epidural anesthesia or the nurse is assigned as the circulating nurse for a cesarean delivery;
- L. One patient when the patient is in active labor;
- M. One patient who is giving birth when the nurse has been assigned only to that patient and one newborn patient when the nurse has been assigned only to that newborn patient;
- N. One newborn patient when the patient is unstable, as determined by the nurse;
- O. One patient couplet of one parent and one newborn when the parent has given birth within the previous 2 hours. In the case of multiple births, one direct-care registered nurse must be assigned for each additional newborn when the direct-care registered nurse has been assigned only to that newborn;
- P. Two patient couplets of one parent and one newborn when the patients are postpartum;
- Q. Four patients when the patients are receiving postpartum or postoperative gynecological care and when the nurse has been assigned only to patients receiving postpartum or postoperative gynecological care;
- R. Two newborn patients when:
- (1) The patients are receiving intermediate care; or
 - (2) The nurse has been assigned to a patient care unit that receives newborn patients requiring intermediate care, including, but not limited to, an intermediate care nursery;
- S. Three patients when:
- (1) The patients have not attained 18 years of age; or
 - (2) The nurse is assigned to a patient care unit that receives patients who have not attained 18 years of age, including, but not limited to, a pediatric unit;
- T. Two patients who have not attained 18 years of age when:
- (1) The patients are receiving bone marrow transplant services; or
 - (2) The nurse is assigned to a patient care unit that receives bone marrow transplant patients who have not attained 18 years of age;
- U. One patient when:
- (1) The patient is receiving coronary care services; or
 - (2) The nurse is assigned to a patient care unit that receives patients requiring coronary care services;
- V. One patient when:
- (1) The patient requires burn care services; or
 - (2) The nurse is assigned to a patient care unit that receives patients requiring burn care services;
- W. One patient when:
- (1) The patient is receiving acute respiratory care services; or

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(2) The nurse is assigned to a patient care unit that receives patients requiring acute respiratory care services;

X. Three patients when:

(1) The patients are receiving telemetry services; or

(2) The nurse is assigned to a patient care unit that receives patients requiring telemetry services;

Y. Four patients when:

(1) The patients are receiving medical surgical care services; or

(2) The nurse is assigned to a patient care unit that receives patients requiring medical surgical care services;

Z. Three patients when:

(1) The patients are receiving observational care services; or

(2) The nurse is assigned to a patient care unit that receives patients requiring observational care services;

AA. Four patients when:

(1) The patients are receiving acute rehabilitation services; or

(2) The nurse is assigned to a patient care unit that receives patients requiring acute rehabilitation services;

BB. Four patients when:

(1) The patients are receiving specialty care services; or

(2) The nurse is assigned to a patient care unit receiving patients requiring specialty care services, including, but not limited to, a specialty care unit, neurological care unit, gastrointestinal unit, orthopedic unit or any other unit that is organized, operated and maintained to provide care for a specific medical condition or a specific patient population;

CC. Four patients when:

(1) The patients are receiving presurgical admissions services; or

(2) The nurse is assigned to a patient care unit that receives patients requiring presurgical admissions services;

DD. Four patients when:

(1) The patients are receiving ambulatory surgical care services or procedures; or

(2) The nurse is assigned to a patient care unit that provides ambulatory surgical care services or procedures;

EE. Four patients when:

(1) The patients are receiving psychiatric treatment or services; or

(2) The nurse is assigned to a patient care unit that receives patients requiring psychiatric treatment or services; and

FF. Four patients in any other patient care unit or for any other patient condition.

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A health care facility may assign a direct-care registered nurse to patients receiving triage services as long as the nurse is performing only triage functions and is able to be immediately available to patients requiring triage services arriving in a patient care unit that receives patients requiring emergency medical services, including, but not limited to, an emergency department or emergency room.

2. Intensity of care. A health care facility shall assign direct-care registered nurses in a patient care unit in accordance with subsection 1 in order to meet the highest level of intensity and type of care provided in the patient care unit. If more than one requirement in subsection 1 applies to a patient, a health care facility shall assign a direct-care registered nurse in accordance with the lowest numerical patient assignment applicable to the patient.

3. Patient need. If, in the professional judgment of a direct-care registered nurse, a patient requires the assignment of more than the number of direct-care registered nurses required in accordance with this section, a health care facility shall assign additional direct-care registered nurses to the patient consistent with the direct-care registered nurse's professional judgment.

§1795. Exception to staffing requirements

The direct-care registered nurse staffing assignments required pursuant to section 1794 do not apply when there is a declared state of emergency. It is a defense to a complaint alleging a violation of section 1794 filed against a health care facility under chapter 405 if the facility demonstrates that it undertook prompt and diligent efforts to maintain the staffing assignments required pursuant to section 1794, despite the declared state of emergency.

§1796. Staffing calculation requirements

The following provisions apply to the calculation of the direct-care registered nurse staffing assignments required pursuant to section 1794.

1. Assignment. A patient must be assigned to a direct-care registered nurse. A patient is considered to be assigned to a direct-care registered nurse if the nurse accepts responsibility for the patient's care and meets the requirements under section 1797.

2. Averaging prohibited. A health care facility may not average the number of patients or number of direct-care registered nurses in a patient care unit during any one shift or over any period of time.

3. Direct care required. A health care facility may not include in the calculation an ancillary staff person or a nurse who does not provide direct, in-person, hands-on care to a patient, including, but not limited to, a nurse administrator, nurse supervisor, nurse manager, charge nurse or case manager. A registered nurse who is also a nurse administrator, nurse supervisor, nurse manager, charge nurse, case manager or any other health care facility administrator or supervisor may be included in the calculation of the direct-care registered nurse staffing assignments required pursuant to section 1794 if the registered nurse:

- A. Has a current and active direct patient care assignment;
- B. Provides direct patient care in compliance with the requirements of this chapter;
- C. Has demonstrated current competency in providing care in the assigned patient care unit and has received orientation to the unit sufficient to provide competent, safe, therapeutic and effective care to patients in the unit;
- D. Has the principal responsibility of providing direct patient care and has no additional job duties during the time period during which the nurse has a patient assignment; and
- E. Is providing relief for a direct-care registered nurse during breaks, meals and other routine or expected absences from the unit.

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4. Prohibited assignments. A health care facility may not assign an ancillary staff person to perform tasks that involve professional judgment or the skill of a direct-care registered nurse, including, but not limited to, patient assessment, evaluation and implementation of a nursing care plan and administration of medications, even if the provision of care is under the supervision of a direct-care registered nurse.

5. Additional duties. A health care facility may not include a direct-care registered nurse in the calculation unless the nurse has the principal responsibility of providing direct patient care to the assigned patient and has no additional job duties other than direct patient care, such as a nurse with triage, external communications or emergency transport duties.

6. Mandatory overtime prohibited. A health care facility may not impose a mandatory overtime requirement on a direct-care registered nurse.

7. Layoffs prohibited. A health care facility may not lay off or otherwise reduce the availability of ancillary staff persons in order to meet the direct-care registered nurse staffing assignments required pursuant to section 1794.

8. Electronic monitoring prohibited. A health care facility may not use any form of electronic monitoring, including, but not limited to, video monitoring or other remote monitoring, to fulfill the staffing requirements.

9. Planning required. A health care facility shall plan for routine fluctuations in the number of patients being treated in the facility resulting from circumstances such as admissions, discharges and transfers of patients in order to maintain staffing ratios pursuant to section 1794.

§1797. Assignment of direct-care registered nurses

A health care facility shall, no less frequently than each shift, assign to a patient a direct-care registered nurse responsible for the provision of care to the patient in accordance with this section.

1. Assignment of direct-care registered nurses generally. A health care facility may not assign a direct-care registered nurse to a patient unless the nurse has demonstrated current competency in providing care to patients in the patient care unit and has also received orientation to the unit sufficient to provide care to patients.

2. Anticipated absences of direct-care registered nurses. A health care facility may assign a direct-care registered nurse to relieve the originally assigned direct-care registered nurse for breaks, meals or other routine, expected absences only if the relieving nurse has demonstrated to the facility competency in providing care to patients in the patient care unit and received orientation to the unit sufficient to provide care to patients.

3. Criteria. A health care facility shall include its criteria for making a staffing assignment under this section in its policies and procedures.

§1798. Use of technology

1. Electronic monitoring prohibited for patient protection. A health care facility may not use any form of electronic monitoring, including, but not limited to, video monitoring or other remote monitoring to substitute for the direct observation by a direct-care registered nurse or an ancillary staff person that is required for patient protection.

2. Technology prohibited for nursing process. A health care facility may not adopt policies or practices that:

A. Employ health information technology, algorithms used to achieve a medical or nursing care objective, systems based on artificial intelligence or clinical practice guidelines that limit or substitute for the direct

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care provided by an assigned direct-care registered nurse in the performance of functions that are part of the nursing process, including the full exercise of independent professional judgment, or that limit a direct-care registered nurse from acting as a patient advocate in the exclusive interests of the patient; or

B. Penalize a direct-care registered nurse for overriding technology or guidelines prohibited in paragraph A if in the direct-care registered nurse's professional judgment and in accordance with the direct-care registered nurse's scope of practice in accordance with Title 32, chapter 31 it is in the best interest of the patient to do so.

§1799. Patient advocacy

1. Patient advocacy. A direct-care registered nurse has a duty and right to act based on the nurse's professional judgment and provide care in the exclusive interests of the patient and to act as the patient's advocate.

2. Professional judgment. A direct-care registered nurse shall exercise professional judgment in the performance of the nurse's duties within the nurse's scope of practice in accordance with Title 32, chapter 31 in the exclusive interests of the patient. A direct-care registered nurse's actions under this subsection may not, for any purpose, be considered, relied upon or represented as a job function, authority, responsibility or activity undertaken for the purpose of serving the business, commercial, operational or other institutional interests of the employer.

3. Nursing care. A direct-care registered nurse shall provide competent, safe, therapeutic and effective nursing care to an assigned patient.

A. Before accepting a patient assignment, a direct-care registered nurse shall:

(1) Have the necessary knowledge, judgment, skills and ability to provide the required care;

(2) Determine using the nurse's professional judgment whether the nurse is competent to perform the nursing care needed by a patient who is in a particular patient care unit or who has a particular diagnosis, condition, prognosis or other determinative characteristic affecting nursing care; and

(3) Determine using the nurse's professional judgment whether acceptance of a patient assignment would expose the patient or direct-care registered nurse to the risk of harm.

4. Objections. As part of a direct-care registered nurse's patient advocacy, a direct-care registered nurse may object to or refuse to accept or participate in any activity, policy, practice, assignment or task in a health care facility if the direct-care registered nurse:

A. Believes, based on the nurse's professional judgment, that the activity, policy, practice, assignment or task would violate Title 32, chapter 31 or rules adopted pursuant to that chapter or be outside the nurse's scope of practice;

B. Believes, based on the nurse's professional judgment, that the activity, policy, practice, assignment or task would violate the staffing requirements under section 1794 or would violate any other provision of this chapter; or

C. Believes, based on the nurse's professional judgment, that the nurse is not prepared by education, training or experience to fulfill the assignment without compromising the safety of a patient or jeopardizing the license of the direct-care registered nurse.

5. Interference and retaliation prohibited. A health care facility, an employee of a health care facility who is primarily responsible for managing the facility or an employee of the facility who is primarily responsible for providing patient care services may not:

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A. Interfere with or prevent a direct-care registered nurse from exercising professional judgment under this section;

B. Limit a direct-care registered nurse in performing duties that are a part of the nursing process, including full exercise of professional judgment in assessment, planning, implementation and evaluation of care;

C. Limit a direct-care registered nurse in acting as a patient advocate in the exclusive interests of the patient; or

D. Discharge from duty, threaten or otherwise retaliate against a direct-care registered nurse who reports an unsafe practice or violation of policy, federal or state law, federal regulation or state rule.

6. Application of Whistleblowers' Protection Act. A violation of subsection 5 is a violation of Title 26, chapter 7, subchapter 5-B.

§1800. Record and notice requirements

A health care facility shall maintain and disclose records relating to actual staffing assignments and any method used to meet the requirements of this chapter in accordance with this section and rules adopted by the department.

1. Record contents. Records maintained and disclosed under this section must include:

A. The number of patients in each patient care unit during each shift;

B. The identity and duty hours of each direct-care registered nurse assigned to each patient in each patient care unit during each shift;

C. The identity and duty hours of each ancillary staff person for each patient care unit during each shift;

D. Certification that each direct-care registered nurse received rest and meal breaks and the identity and duty hours of each direct-care registered nurse who provided relief during the breaks; and

E. A copy of each notice required under subsection 4.

2. Required duration of records maintenance. Records under this section must be maintained for at least 3 years.

3. Records submitted to department. A health care facility shall submit all records under this section to the department as a condition of licensure under chapter 405. The chief nursing officer shall certify that records submitted to the department pursuant to this subsection completely and accurately reflect staffing assignments in each patient care unit. The certification must be executed under penalty of perjury and must contain an express acknowledgment that any false statement constitutes fraud and is subject to criminal prosecution or civil penalties.

4. Notice requirements. A health care facility shall post in each patient care unit a notice in a form specified by department rule that:

A. Explains the requirements of record maintenance under this section;

B. Includes actual direct-care registered nurse staffing assignments in each patient care unit during each shift;

C. Includes the actual number of ancillary staff persons and the skill mix of the ancillary staff persons in each patient care unit during each shift;

D. Identifies the variance between the required and actual staffing assignments in each patient care unit during each shift; and

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E. Is visible, conspicuous and accessible to health care facility staff, patients and the public.

5. Records publicly accessible. Records maintained under this section must be made available to the department, direct-care registered nurses, a nurse's collective bargaining representative and the public.

§1801. Audits

The department shall conduct periodic audits to ensure that a health care facility has implemented the direct-care registered nurse staffing requirement pursuant to this chapter.

§1802. Administrative sanctions; investigation

In addition to the penalties available under section 1804 and licensure requirements under section 1817, the department may impose a sanction under this section in conformity with Title 5, chapter 375, subchapter 4.

1. Notice. The department may direct by written notice a health care facility to correct any violations under this chapter and any rules adopted under this chapter in a manner and within a time frame that the department determines appropriate to ensure compliance or protect the public health. The health care facility shall correct any violations within the time frame determined by the department.

2. Investigation. The department may investigate complaints against a health care facility in order to ensure compliance with this chapter and any rules adopted under this chapter.

3. Sanctions. The department may impose the following administrative penalties on a health care facility.

A. For violations of subsection 1 or sections 1794, 1796, 1797, 1798 and 1800 a rule adopted to implement this section or those sections, the department may assess a fine of not more than \$10,000 per nursing shift in violation. Each day a health care facility violates subsection 1 or section 1794, 1796, 1797, 1798 or 1800 is a separate offense.

B. For violations of section 1799, subsection 5 or a rule adopted to implement that subsection, the department may assess a fine of not more than \$25,000 per nursing shift.

§1803. Civil violations

This section governs violations under this chapter.

1. Violation of health care facility staffing requirements. This subsection applies to violations of sections 1794, 1796, 1797, 1798 and 1800 and section 1803, subsection 1.

A. A health care facility may not violate section 1794, 1796, 1797, 1798 or 1800 or section 1803, subsection 1 or a rule adopted to implement those sections.

B. A health care facility that violates paragraph A commits a civil violation for which a fine of not more than \$10,000 per nursing shift in violation may be adjudged. Each day a health care facility violates paragraph A is a separate offense.

2. Violation for interfering or retaliating for a nurse's objection or refusal; violation. This subsection applies to violations of section 1799, subsection 5.

A. A health care facility, an employee of a health care facility who is primarily responsible for managing the health care facility or an employee of a health care facility who is primarily responsible for providing patient care services may not violate section 1799, subsection 5 or a rule adopted to implement that subsection.

B. A health care facility, an employee of a health care facility who is primarily responsible for managing the health care facility or an employee of a health care facility who is primarily responsible for providing

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patient care services who violates paragraph A commits a civil violation for which a fine of not more than \$25,000 per nursing shift in violation may be adjudged.

§1804. Enforcement

The Attorney General may file a complaint with the District Court seeking civil penalties or injunctive relief or both for violations of this chapter.

§1805. Complaints

A person may file a complaint with the department against a facility for violations of this chapter. The department shall refer any complaint alleging a violation of section 1799, subsection 5 to the Maine Human Rights Commission.

§1806. Rulemaking

The department may adopt rules to implement this chapter. The department shall rely on and incorporate principles of the nursing profession in rules adopted pursuant to this section. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

Sec. 2. 22 MRSA §1817, as repealed and replaced by PL 2007, c. 324, §4, is amended to read:

§1817. Issuance of licenses

The department is authorized to issue licenses to operate hospitals, sanatoriums, convalescent homes, rest homes, nursing homes, ambulatory surgical facilities and other related institutions that, after inspection, are found to comply with this chapter, chapter 404-A and any rules adopted by the department. An initial license may be issued for up to 12 months. A license may be renewed for up to 24 months. The fee for this temporary or conditional license is \$15 and is payable at the time of issuance of the license regardless of the term. When an institution, upon inspection by the department, is found not to meet all requirements of this chapter or department rules, the department is authorized to issue either:

1. Temporary license. A temporary license for a specified period not to exceed 90 days, during which time corrections specified by the department must be made by the institution for compliance with this chapter, chapter 404-A and departmental rules, if in the judgment of the commissioner the best interests of the public will be so served; or

2. Conditional license. A conditional license setting forth conditions that must be met by the institution to the satisfaction of the department.

Failure of the institution to meet any of the department's conditions immediately voids the temporary or conditional license by written notice by the department to the licensee or, if the licensee cannot be reached for personal service, by notice left at the licensed premises. A new application for a regular license may be considered by the department if, when and after the conditions set forth by the department at the time of the issuance of this temporary or conditional license have been met and satisfactory evidence of this fact has been furnished to the department. The department may amend, modify or refuse to renew a license in conformity with the Maine Administrative Procedure Act, or file a complaint with the District Court requesting suspension or revocation of any license on any of the following grounds: violation of this chapter or the rules ~~issued~~ adopted pursuant to this chapter; violation of chapter 404-A or the rules adopted by the department pursuant to chapter 404-A; permitting, aiding or abetting the commission of any illegal act in that institution; or conduct of practices detrimental to the welfare of a patient. Whenever, on inspection by the department, conditions are found to exist that violate this chapter or department rules ~~issued~~ adopted pursuant to this chapter or violate chapter 404-A or the rules adopted by the department pursuant to chapter 404-A that, in the opinion of the commissioner, immediately endanger the health or safety of patients in an institution or create an emergency, the department by its duly authorized agents may, under the emergency provisions of

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Title 4, section 184, subsection 6, request that the District Court suspend or revoke the license. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

SUMMARY

This bill establishes the Maine Quality Care Act in order to ensure adequate direct-care registered nurse staffing assignments in health care facilities, including hospitals, freestanding emergency departments and ambulatory surgical facilities, to provide safe and effective patient care. It establishes minimum direct-care registered nurse staffing requirements based on patient care unit and patient needs, specifies the method to calculate a health care facility's compliance with the staffing requirements, protects direct-care registered nurses from retaliation and includes notice, record-keeping and enforcement requirements.