COUNCIL OF THE DISTRICT OF COLUMBIA
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Mr. Robert Weissman, President
Public Citizen
1600 20th Street, NW
Washington, D.C. 20009

Dear Mr. Weissman,

Thank you for writing to my office about the Patient Protection Act of 2013. Ensuring the safety of every hospital patient in the District is one of my top priorities. Everyone agrees that the people of the District are entitled to skilled, attentive, and well-trained nurses; however, for patients seeking better care, a wooden, one-size-fits-all approach isn't the answer. I agree that insufficient staffing can have detrimental consequences; however, it is not clear that mandating staffing ratios is the best approach to improving hospital care. If anything, the literature cited as support for mandatory staffing ratios has been met with skepticism; particularly the data that is dated, conditional, and hypothetical.

Each District hospital provides specialized-care, and the patients at these facilities have different needs. For these reasons, I introduced the Nurse Safe Staffing Act of 2013. The proposed legislation would provide more flexibility than fixed staffing ratios because it would require hospitals and nurses to work together to develop staffing plans. In fact, each staffing plan will be developed by a hospital nurse committee, with at least 55% of registered nurses (unaffiliated with hospital management) comprising the committee.

My bill was drafted and endorsed by the American Nurses Association. You and I agree that District patients deserve optimal hospital care, and the Nurse Safe Staffing Act of 2013 seeks to achieve that goal. I invite you to review the legislation (a copy of which I have enclosed) and to consider supporting it.

Thank you for your letter and I appreciate any further questions or concerns you may have.

Regards,

Mary M. Cheh

cc: Michael Carome, M.D., Deputy Director, Public Citizen's Health Research Group

Councilmember Mary M. Cheh

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

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

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

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

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

(1) The Committee shall include:

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

(B) Members who are hospital nurse managers;

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

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

(2) The Committee shall:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) Each hospital shall:

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

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

(A) The nursing staff information for the hospital;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 6. Refusal of assignment.

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

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

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

Sec. 7. Enforcement.

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

(b) The Director shall establish procedures under which:

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

(2) Such complaints are investigated by the Director.

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

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

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

(d) In addition to any other penalties prescribed by law, the Director may impose a civil money penalty of not more than $10,000 for each knowing violation of a requirement of this section, except that the Director shall impose a civil money penalty of more than $10,000 for

each such violation in the case of a hospital that the Director determines has a pattern or practice of such violations (with the amount of such additional penalties being determined in accordance with a schedule or methodology specified in regulations).

Sec. 8. Whistleblower protections.

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

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

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

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

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

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

(e) For purposes of this subsection:

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

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

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

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

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

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

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

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

Sec. 9. Fiscal impact statement.

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

Sec. 10. Effective date.

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