

1 H.313

2 Introduced by Representatives Donovan of Burlington, Aswad of Burlington,
3 Buxton of Royalton, Davis of Washington, Lenos of Shelburne,
4 Macaig of Williston, Mitchell of Barnard, Peltz of Woodbury
5 and Shand of Weathersfield

6 Referred to Committee on

7 Date:

8 Subject: Health care facilities; patient safety

9 Statement of purpose: This bill proposes to improve patient safety by
10 requiring hospitals and nursing home facilities to establish a safe patient
11 handling program and by prohibiting mandatory overtime for certain health
12 care employees.

13 An act relating to patient safety

14 It is hereby enacted by the General Assembly of the State of Vermont:

15 Sec. 1. 18 V.S.A. Part 3, chapter 58 is added to read:

16 CHAPTER 58. SAFE PATIENT HANDLING

17 § 2501. LEGISLATIVE FINDINGS AND INTENT

18 The general assembly finds:

1 (1) Patients are at greater risk of injury, including skin tears, falls, and
2 musculoskeletal injuries, when being lifted, transferred, or repositioned
3 manually.

4 (2) Safe patient handling can reduce skin tears suffered by patients by
5 threefold and can significantly reduce other injuries to patients as well.

6 (3) Without adequate resources such as special equipment and specially
7 trained staff, lifting patients, whether the patients are overweight or not,
8 increases the risk of injury to the patients and health care providers when the
9 patient is being moved, being repositioned, or receiving other care. Fifty-nine
10 percent of Vermont adults are overweight or obese, which substantially
11 increases risks for many chronic diseases.

12 (4) Health care workers lead the nation in work-related musculoskeletal
13 disorders. Chronic back pain and other job-related musculoskeletal disorders
14 contribute significantly to the decision by nurses and other health care workers
15 to leave their professions, which exacerbates the shortage of health care
16 workers.

17 (5) Research indicates that nurses lift an estimated 1.8 tons per shift.
18 Eighty-three percent of nurses work in spite of back pain, and 60 percent of
19 nurses fear a disabling back injury. Twelve percent to 39 percent of nurses not
20 yet disabled are considering leaving nursing due to back pain and injuries.

1 (6) Safe patient handling reduces injuries and costs. In nine case studies
2 evaluating the impact of lifting equipment, injuries decreased 60 percent to 95
3 percent; lifting and handling was reduced by 98 percent.

4 (7) Studies show that manual patient handling and movement negatively
5 affect patient safety, quality of care, and patient comfort, dignity, and
6 satisfaction.

7 (8) The American Hospital Association has stated that work-related
8 musculoskeletal disorders account for the largest proportion of workers'
9 compensation costs in hospitals and long-term care facilities.

10 (9) Studies demonstrate that assistive patient handling technology
11 reduces workers' compensation and medical treatment costs for
12 musculoskeletal disorders among health care workers, and that employers can
13 recoup their initial investment in equipment and training within three years.

14 § 2502. DEFINITIONS

15 As used in this chapter:

16 (1) "Clinical care services" means the diagnostic, treatment, or
17 rehabilitative services provided in a health care facility including: radiology
18 and diagnostic imaging, such as magnetic resonance imaging and positron
19 emission tomography; radiation therapy; phlebotomy; electrocardiogram and
20 electroencephalography; and laboratory medical services.

1 (2) “Health care facility” shall mean a hospital licensed under chapter 43
2 of this title or a nursing home licensed under chapter 71 of Title 33.

3 (3) “Lift team” means health care facility employees specially trained to
4 perform patient lifts, transfers, and repositioning in accordance with safe
5 patient handling policy.

6 (4) “Musculoskeletal disorders” means conditions that involve the
7 nerves, tendons, muscles, and supporting structures of the body.

8 (5) “Safe patient handling” means the use of engineering controls,
9 transfer aids, or assistive devices whenever feasible and appropriate instead of
10 manual lifting to perform the acts of lifting, transferring, or repositioning
11 health care patients and residents.

12 (6) “Safe patient handling policy” means protocols established to
13 implement safe patient handling.

14 § 2503. SAFE PATIENT HANDLING PROGRAM

15 (a) A safe patient handling program shall include:

16 (1) a safe patient handling policy on all units and for all shifts that,
17 consistent with patient safety and well-being, restricts unassisted patient
18 handling of all or most of a patient’s weight to situations in which a patient is
19 in need of immediate attention or in which the use of assisted patient handling
20 would jeopardize the safety of the patient;

1 (2) an assessment of the safe patient handling assistive devices needed
2 to carry out the facility's safe patient handling policy;

3 (3) the purchase of safe patient handling equipment and patient handling
4 aids necessary to carry out the safe patient handling policy;

5 (4) protocols and procedures for assessing and updating the appropriate
6 patient handling requirements of each patient of the facility;

7 (5) a plan for assuring prompt access to and availability of mechanical
8 patient handling equipment and patient handling aids on all units and all shifts;

9 (6) a provision requiring that all such equipment and aids be stored and
10 maintained in compliance with their manufacturers' recommendations;

11 (7) a training program for health care workers at no cost that:

12 (A) covers the identification, assessment, and control of patient
13 handling risks; the safe, appropriate, and effective use of patient handling
14 equipment and aids; and proven safe patient handling techniques;

15 (B) requires trainees to demonstrate proficiency in the techniques and
16 practices presented;

17 (C) is provided during paid work time; and

18 (D) is conducted upon commencement of the health care facility's
19 safe patient handling program and at least annually thereafter, with appropriate
20 interim training for individuals beginning work between annual training
21 sessions;

1 (8) educational materials for patients and their families to help orient
2 them to the facility's safe patient handling program;

3 (9) an annual report to the safe patient handling committee of the health
4 care facility and to the department of banking, insurance, securities, and health
5 care administration, which shall be made available to the public upon request,
6 on activities related to the identification, assessment, development, and
7 evaluation of strategies to control risk of injury to patients, nurses, and other
8 health care workers associated with the lifting, transferring, repositioning, or
9 movement of a patient;

10 (10) posting of the safe patient handling policy in a location easily
11 visible to staff, patients, and visitors; and

12 (11) a designated representative of the facility who shall be responsible
13 for overseeing all aspects of the safe patient handling program.

14 (b) A health care facility shall conduct an annual evaluation of the program
15 and make revisions to the program based on data analysis and feedback from
16 the facility's health care workers.

17 (c) A health care facility shall purchase the equipment and aids determined
18 necessary to carry out its safe patient handling policy and conduct the initial
19 training as required in this section within 24 months of the effective date of
20 this act.

1 (d) Nothing in this section precludes lift team members from performing
2 other duties as assigned during their shifts.

3 § 2504. RETALIATION

4 A covered health care facility shall not retaliate against any health care
5 worker because that worker refuses to perform a patient handling task due to a
6 reasonable concern about worker or patient safety or the lack of appropriate
7 and available patient handling equipment or aids.

8 § 2505. PATIENT HANDLING COMMITTEE

9 (a) Each licensed health care facility shall establish a safe patient handling
10 committee which shall be responsible for all aspects of the development,
11 implementation, and periodic evaluation and revision of the facility's safe
12 patient handling program, including the evaluation and selection of patient
13 handling equipment and aids and other appropriate engineering controls. The
14 committee shall be chaired by a professional nurse or other appropriate
15 licensed health care professional. A health care facility may utilize any
16 appropriately configured committee to perform the responsibilities of this
17 section. At least 50 percent of the members of the committee shall be health
18 care workers who provide direct patient care to patients at the facility or are
19 otherwise involved in patient handling at the facility. In a facility where health
20 care workers are represented by a collective bargaining agent, the collective
21 bargaining agent shall select the health care worker committee members. The

1 remaining members of the committee shall have experience, expertise, or
2 responsibility relevant to the operation of a safe patient handling program.

3 (b) An employee may, in accordance with established facility protocols,
4 report to the committee, as soon as possible, after being required to perform a
5 patient handling activity that he or she believes in good faith exposed the
6 patient or employee, or both, to an unacceptable risk of injury. Such employee
7 reporting shall not be cause for discipline or be subject to other adverse
8 consequences by his or her employer. These reportable incidents shall be
9 included in the facility's annual performance evaluation.

10 § 2506. DETERMINATION OF NEED FOR NEW HEALTH CARE

11 EQUIPMENT AND NEW INSTITUTIONAL HEALTH SERVICES

12 A health care facility which develops or offers new health care equipment
13 or new institutional health services in Vermont shall consider the proposed
14 availability and use of safe patient handling equipment in the new or renovated
15 space to be constructed.

16 Sec. 2. 18 V.S.A. Part 3, chapter 59 is added to read:

17 CHAPTER 59. PROHIBITION ON MANDATORY OVERTIME

18 § 2601. DEFINITIONS

19 As used in this chapter:

20 (1) "Employee" means an individual employed by a health care facility
21 who is involved in direct patient care activities or clinical care services and

1 who receives an hourly wage or is classified as a nonsupervisory employee for
2 collective bargaining purposes. The term does not include a physician,
3 physician assistant, dentist, or worker involved in environmental services,
4 clerical, maintenance, food service, or other job classification not involved in
5 direct patient care and clinical care services.

6 (2) “Health care facility” shall mean a hospital licensed under chapter 43
7 of this title or a nursing home licensed under chapter 71 of Title 33.

8 (3) “Reasonable efforts” means attempts by a health care facility to:

9 (A) seek persons who volunteer to work extra time from all available
10 qualified staff who are working at the time of the unforeseeable circumstance;

11 (B) contact all qualified employees who have made themselves
12 available to work extra time; and

13 (C) seek the use of per diem or float pool staff.

14 (4) “Unforeseeable emergency circumstance” means any declared
15 national, state, or municipal disaster or other catastrophic event or any
16 implementation of a hospital’s disaster plan that will substantially affect or
17 increase the need for health care services or any circumstance in which patient
18 care needs require specialized nursing skills through the completion of a
19 procedure. An unforeseen emergency circumstance does not include situations
20 in which the health care facility fails to have enough nursing staff to meet the
21 usual and reasonably predictable nursing needs of its patients.

1 § 2602. PROHIBITION ON MANDATORY OVERTIME

2 (a) No health care facility shall require an employee to work in excess of
3 eight hours per day, in excess of 40 hours per week, or in excess of
4 agreed-upon scheduled hours.

5 (b) Subsection (a) of this section shall not apply when there is an
6 unforeseeable emergency circumstance requiring overtime and the employer
7 has exhausted other reasonable efforts to obtain staff and documented in
8 writing the reasonable efforts taken, and the documentation is provided to the
9 department of banking, insurance, securities, and health care administration.
10 In the event of an unforeseeable emergency circumstance, the health care
11 facility shall provide the employee sufficient time up to one hour to arrange for
12 the care of the employee's minor children or elderly or disabled family
13 members. If the emergency is a declared national, state, or municipal
14 emergency or other disaster or catastrophic event that substantially affects or
15 increases the need for health care services, the employer is not required to
16 exhaust all reasonable efforts to obtain staff.

17 (c) An employee may be required to fulfill prescheduled on-call time, but
18 nothing in this chapter shall be construed to permit a health care facility to use
19 on-call time as a substitute for mandatory overtime.

20 (d) Any mandatory overtime provision in a contract, agreement, or
21 understanding is unenforceable and void as against public policy.

1 (e) Nothing in this section shall be construed to limit voluntary overtime in
2 excess of an agreed-to, predetermined scheduled work shift.

3 (f) A health care facility shall not penalize, discharge, dismiss, discriminate
4 against in any way, or take any other adverse employment action against an
5 employee who refuses to accept overtime work.

6 (g) A health care facility shall post the requirements of this section in a
7 location accessible and visible to the employees and the public.

8 (h) An employee may file a complaint with the department of banking,
9 insurance, securities, and health care administration for any alleged violation
10 of this section. The complaint shall be filed within 60 days of the incident
11 giving rise to the violation. The department shall notify the health care facility
12 of the alleged violation within three business days after the complaint is filed.
13 The department shall determine whether a violation of this section has
14 occurred and shall levy a penalty of \$1,000.00 for each violation.