

Senate Bill No. 362—Senators Spearman
and Segerblom

CHAPTER.....

AN ACT relating to health care facilities; requiring certain health care facilities to establish policies pursuant to which a licensed nurse or certified nursing assistant may refuse or object to a work assignment; requiring the staffing committees of certain hospitals to develop such policies for the hospitals; requiring certain hospitals to include certified nursing assistants in the membership of the staffing committees of the hospitals; requiring certain health care facilities to include certain staffing requirements and protocols within the documented staffing plans of the health care facilities; requiring certain health care facilities to ensure that the health care facility is staffed in accordance with its documented staffing plan; providing administrative penalties; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law requires: (1) hospitals which are located in a county whose population is 100,000 or more (currently Clark and Washoe Counties) and which are licensed to have more than 70 beds to establish a staffing committee; and (2) health care facilities which are located in a county whose population is 100,000 or more and which are licensed to have more than 70 beds to make available to the Health Division of the Department of Health and Human Services a documented staffing plan. (NRS 449.242, 449.2421) **Section 30.6** of this bill requires those hospitals to include certified nursing assistants in the membership of the staffing committees. **Section 30.6** also requires those staffing committees to develop the written policies for refusals of and objections to a work assignment as set forth in **section 15** of this bill. **Section 30.9** of this bill requires those health care facilities to include in their documented staffing plans: (1) the number of certified nursing assistants in each unit of the health care facility; and (2) protocols for adequately staffing the health care facility in certain circumstances, including, without limitation, in the event of an emergency. **Section 30.9** also requires that each such health care facility: (1) provide to the Health Division the written policy for refusals of and objections to a work assignment; and (2) ensure that the facility is staffed in accordance with its documented staffing plan.

Section 15 requires each health care facility described above to establish written policies pursuant to which a licensed nurse or certified nursing assistant may refuse or object to a work assignment. **Section 17** of this bill requires the Health Division of the Department of Health and Human Services to ensure general compliance with the provisions of the law which govern the written policies and staffing requirements as well as to adopt regulations to carry out those provisions. **Sections 25-29** of this bill amend existing law to indicate that: (1) the Health Division may take certain actions to enforce the amendatory provisions of this bill; and (2) the amendatory provisions of this bill will be codified with and treated similarly to existing laws which govern the licensing and regulation of health care facilities. **Section 29.5** of this bill amends existing law to prohibit a medical facility from retaliating or discriminating against a licensed nurse or certified nursing



assistant who requests to be relieved of a work assignment, refuses a work assignment or objects to a work assignment pursuant to a policy adopted pursuant to **section 15**.

EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 449 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 24, inclusive, of this act.

Sec. 2. (Deleted by amendment.)

Sec. 3. *“Certified nursing assistant” means a person who has been certified by the State Board of Nursing pursuant to NRS 632.2852 to practice as a nursing assistant in this State.*

Secs. 4-14. (Deleted by amendment.)

Sec. 15. 1. *As a condition of licensure, a health care facility which is located in a county whose population is 100,000 or more and which is licensed to have more than 70 beds must adopt and disseminate to each licensed nurse and certified nursing assistant employed by the health care facility a written policy that sets forth the circumstances under which a licensed nurse or certified nursing assistant may refuse or object to a work assignment.*

2. The written policy concerning work assignments must, at a minimum, allow a licensed nurse or certified nursing assistant to:

(a) Refuse a work assignment for any reason for refusal set forth in paragraph (b) of subsection 1 of NRS 449.205; and

(b) File an objection to a work assignment if the work assignment violates any provision of NRS 449.241 to 449.2421, inclusive, and sections 2 to 24, inclusive, of this act.

3. For the purposes of refusing a work assignment pursuant to paragraph (a) of subsection 2, the written policy concerning work assignments must contain:

(a) Reasonable requirements for prior notice to the supervisor of the licensed nurse or certified nursing assistant of the request by the licensed nurse or certified nursing assistant to be relieved of the work assignment, including, without limitation, the reasons supporting the request;

(b) Reasonable requirements which provide, if feasible, an opportunity for the supervisor to review a request by the licensed nurse or certified nursing assistant to be relieved of the work



assignment, including any specific conditions supporting the request, and based upon that review:

(1) Relieve the licensed nurse or certified nursing assistant of the work assignment as requested; or

(2) Deny the request; and

(c) A process pursuant to which a licensed nurse or certified nursing assistant may exercise his or her right to refuse a work assignment if the supervisor does not approve the request to be relieved of the work assignment if:

(1) The supervisor failed to approve the request without proposing a remedy or, if a remedy is proposed, the proposed remedy would be inadequate or untimely;

(2) The process for filing a complaint with the Health Division or any other appropriate regulatory entity, including any investigation that would be required, would be untimely to address the concerns of the licensed nurse or certified nursing assistant in refusing a work assignment; and

(3) The licensed nurse or certified nursing assistant in good faith believes that the work assignment meets the conditions established in the written policy justifying refusal.

4. For the purposes of objecting to a work assignment pursuant to paragraph (b) of subsection 2, the written policy concerning work assignments must contain:

(a) A process for a licensed nurse or certified nursing assistant to file an objection with the health care facility, but still accept the work assignment despite the objection; and

(b) A requirement that the health care facility respond to the objection as soon as practicable, but not later than 45 days after receiving the objection.

5. The health care facility shall:

(a) Maintain records for at least 2 years of each request to be relieved of a work assignment, each refusal of a work assignment and each objection to a work assignment that is filed with the health care facility pursuant to the written policy adopted pursuant to this section;

(b) If the health care facility has established a staffing committee pursuant to NRS 449.242, provide to the staffing committee:

(1) The number of requests to be relieved of a work assignment and refusals of a work assignment made by a licensed nurse or a certified nursing assistant at the health care facility pursuant to this section;



(2) The number of objections to a work assignment filed by a licensed nurse or a certified nursing assistant at the health care facility pursuant to this section; and

(3) An explanation of how the health care facility addressed the requests, refusals and objections; and

(c) Ensure that the health care facility complies with the written policy adopted pursuant to this section.

Sec. 16. (Deleted by amendment.)

Sec. 17. *For each health care facility which is located in a county whose population is 100,000 or more and which is licensed to have more than 70 beds, the Health Division shall:*

1. Ensure the general compliance of the health care facility with the provisions of NRS 449.241 to 449.2421, inclusive, and sections 2 to 24, inclusive, of this act, including, without limitation, those provisions relating to documented staffing plans and written policies adopted pursuant to section 15 of this act; and

2. Adopt such regulations as are necessary or appropriate to carry out the provisions of this section.

Secs. 18-24. (Deleted by amendment.)

Sec. 25. NRS 449.0301 is hereby amended to read as follows:

449.0301 The provisions of NRS 449.030 to 449.240, inclusive, *and 449.241 to 449.2421, inclusive, and sections 2 to 24, inclusive, of this act* do not apply to:

1. Any facility conducted by and for the adherents of any church or religious denomination for the purpose of providing facilities for the care and treatment of the sick who depend solely upon spiritual means through prayer for healing in the practice of the religion of the church or denomination, except that such a facility shall comply with all regulations relative to sanitation and safety applicable to other facilities of a similar category.

2. Foster homes as defined in NRS 424.014.

3. Any medical facility or facility for the dependent operated and maintained by the United States Government or an agency thereof.

Sec. 26. NRS 449.040 is hereby amended to read as follows:

449.040 Any person, state or local government or agency thereof desiring a license under the provisions of NRS 449.030 to 449.240, inclusive, *and 449.241 to 449.2421, inclusive, and sections 2 to 24, inclusive, of this act* must file with the Health Division an application on a form prescribed, prepared and furnished by the Health Division, containing:

1. The name of the applicant and, if a natural person, whether the applicant has attained the age of 21 years.



2. The type of facility to be operated.
3. The location of the facility.
4. In specific terms, the nature of services and type of care to be offered, as defined in the regulations.
5. The number of beds authorized by the Director of the Department of Health and Human Services or, if such authorization is not required, the number of beds the facility will contain.
6. The name of the person in charge of the facility.
7. Such other information as may be required by the Health Division for the proper administration and enforcement of NRS 449.030 to 449.240, inclusive ~~§~~ , *and 449.241 to 449.2421, inclusive, and sections 2 to 24, inclusive, of this act.*
8. Evidence satisfactory to the Health Division that the applicant is of reputable and responsible character. If the applicant is a firm, association, organization, partnership, business trust, corporation or company, similar evidence must be submitted as to the members thereof ~~§~~ and the person in charge of the facility for which application is made. If the applicant is a political subdivision of the State or other governmental agency, similar evidence must be submitted as to the person in charge of the institution for which application is made.
9. Evidence satisfactory to the Health Division of the ability of the applicant to comply with the provisions of NRS 449.030 to 449.240, inclusive, *and 449.241 to 449.2421, inclusive, and sections 2 to 24, inclusive, of this act* and the standards and regulations adopted by the Board.
10. Evidence satisfactory to the Health Division that the facility conforms to the zoning regulations of the local government within which the facility will be operated or that the applicant has applied for an appropriate reclassification, variance, permit for special use or other exception for the facility.
11. If the facility to be licensed is a residential establishment as defined in NRS 278.02384, and if the residential establishment is subject to the distance requirements set forth in subsection 3 of NRS 278.02386, evidence satisfactory to the Health Division that the residential establishment will be located and operated in accordance with the provisions of that subsection.

Sec. 27. NRS 449.089 is hereby amended to read as follows:

449.089 1. Each license issued pursuant to NRS 449.030 to 449.240, inclusive, *and 449.241 to 449.2421, inclusive, and sections 2 to 24, inclusive, of this act* expires on December 31 following its issuance and is renewable for 1 year upon reapplication and payment of all fees required pursuant to



NRS 449.050 unless the Health Division finds, after an investigation, that the facility has not:

(a) Satisfactorily complied with the provisions of NRS 449.030 to 449.240, inclusive, *and 449.241 to 449.2421, inclusive, and sections 2 to 24, inclusive, of this act* or the standards and regulations adopted by the Board;

(b) Obtained the approval of the Director of the Department of Health and Human Services before undertaking a project, if such approval is required by NRS 439A.100; or

(c) Conformed to all applicable local zoning regulations.

2. Each reapplication for an agency to provide personal care services in the home, an agency to provide nursing in the home, a facility for intermediate care, a facility for skilled nursing, a residential facility for groups or a home for individual residential care must include, without limitation, a statement that the facility, agency or home is in compliance with the provisions of NRS 449.121 to 449.125, inclusive, and 449.174.

3. Each reapplication for an agency to provide personal care services in the home, a facility for intermediate care, a facility for skilled nursing, a facility for the care of adults during the day, a residential facility for groups or a home for individual residential care must include, without limitation, a statement that the holder of the license to operate, and the administrator or other person in charge and employees of, the facility, agency or home are in compliance with the provisions of NRS 449.093.

Sec. 28. NRS 449.160 is hereby amended to read as follows:

449.160 1. The Health Division may deny an application for a license or may suspend or revoke any license issued under the provisions of NRS 449.030 to 449.240, inclusive, *and 449.241 to 449.2421, inclusive, and sections 2 to 24, inclusive, of this act* upon any of the following grounds:

(a) Violation by the applicant or the licensee of any of the provisions of NRS 439B.410 or 449.030 to 449.245, inclusive, *and sections 2 to 24, inclusive, of this act* or of any other law of this State or of the standards, rules and regulations adopted thereunder.

(b) Aiding, abetting or permitting the commission of any illegal act.

(c) Conduct inimical to the public health, morals, welfare and safety of the people of the State of Nevada in the maintenance and operation of the premises for which a license is issued.

(d) Conduct or practice detrimental to the health or safety of the occupants or employees of the facility.



(e) Failure of the applicant to obtain written approval from the Director of the Department of Health and Human Services as required by NRS 439A.100 or as provided in any regulation adopted pursuant to this chapter, if such approval is required.

(f) Failure to comply with the provisions of NRS 449.2486.

2. In addition to the provisions of subsection 1, the Health Division may revoke a license to operate a facility for the dependent if, with respect to that facility, the licensee that operates the facility, or an agent or employee of the licensee:

(a) Is convicted of violating any of the provisions of NRS 202.470;

(b) Is ordered to but fails to abate a nuisance pursuant to NRS 244.360, 244.3603 or 268.4124; or

(c) Is ordered by the appropriate governmental agency to correct a violation of a building, safety or health code or regulation but fails to correct the violation.

3. The Health Division shall maintain a log of any complaints that it receives relating to activities for which the Health Division may revoke the license to operate a facility for the dependent pursuant to subsection 2. The Health Division shall provide to a facility for the care of adults during the day:

(a) A summary of a complaint against the facility if the investigation of the complaint by the Health Division either substantiates the complaint or is inconclusive;

(b) A report of any investigation conducted with respect to the complaint; and

(c) A report of any disciplinary action taken against the facility.

→ The facility shall make the information available to the public pursuant to NRS 449.2486.

4. On or before February 1 of each odd-numbered year, the Health Division shall submit to the Director of the Legislative Counsel Bureau a written report setting forth, for the previous biennium:

(a) Any complaints included in the log maintained by the Health Division pursuant to subsection 3; and

(b) Any disciplinary actions taken by the Health Division pursuant to subsection 2.

Sec. 29. NRS 449.163 is hereby amended to read as follows:

449.163 1. In addition to the payment of the amount required by NRS 449.0308, if a medical facility or facility for the dependent violates any provision related to its licensure, including any provision of NRS 439B.410 or 449.030 to 449.240, inclusive, *and 449.241 to 449.2421, inclusive, and sections 2 to 24, inclusive, of*



this act or any condition, standard or regulation adopted by the Board, the Health Division, in accordance with the regulations adopted pursuant to NRS 449.165, may:

(a) Prohibit the facility from admitting any patient until it determines that the facility has corrected the violation;

(b) Limit the occupancy of the facility to the number of beds occupied when the violation occurred, until it determines that the facility has corrected the violation;

(c) If the license of the facility limits the occupancy of the facility and the facility has exceeded the approved occupancy, require the facility, at its own expense, to move patients to another facility that is licensed;

(d) Impose an administrative penalty of not more than \$1,000 per day for each violation, together with interest thereon at a rate not to exceed 10 percent per annum; and

(e) Appoint temporary management to oversee the operation of the facility and to ensure the health and safety of the patients of the facility, until:

(1) It determines that the facility has corrected the violation and has management which is capable of ensuring continued compliance with the applicable statutes, conditions, standards and regulations; or

(2) Improvements are made to correct the violation.

2. If a violation by a medical facility or facility for the dependent relates to the health or safety of a patient, an administrative penalty imposed pursuant to paragraph (d) of subsection 1 must be in a total amount of not less than \$1,000 and not more than \$10,000 for each patient who was harmed or at risk of harm as a result of the violation.

3. If the facility fails to pay any administrative penalty imposed pursuant to paragraph (d) of subsection 1, the Health Division may:

(a) Suspend the license of the facility until the administrative penalty is paid; and

(b) Collect court costs, reasonable attorney's fees and other costs incurred to collect the administrative penalty.

4. The Health Division may require any facility that violates any provision of NRS 439B.410 or 449.030 to 449.240, inclusive, *and 449.241 to 449.2421, inclusive, and sections 2 to 24, inclusive, of this act* or any condition, standard or regulation adopted by the Board to make any improvements necessary to correct the violation.

5. Any money collected as administrative penalties pursuant to paragraph (d) of subsection 1 must be accounted for separately and used to administer and carry out the provisions of this chapter and to



protect the health, safety, well-being and property of the patients and residents of facilities in accordance with applicable state and federal standards.

Sec. 29.5. NRS 449.205 is hereby amended to read as follows:

449.205 1. A medical facility or any agent or employee thereof shall not retaliate or discriminate unfairly against:

(a) An employee of the medical facility or a person acting on behalf of the employee who in good faith:

(1) Reports to the Board of Medical Examiners or the State Board of Osteopathic Medicine, as applicable, information relating to the conduct of a physician which may constitute grounds for initiating disciplinary action against the physician or which otherwise raises a reasonable question regarding the competence of the physician to practice medicine with reasonable skill and safety to patients;

(2) Reports a sentinel event to the Health Division pursuant to NRS 439.835; or

(3) Cooperates or otherwise participates in an investigation or proceeding conducted by the Board of Medical Examiners, the State Board of Osteopathic Medicine or another governmental entity relating to conduct described in subparagraph (1) or (2); or

(b) A registered nurse, licensed practical nurse, nursing assistant or medication aide - certified who is employed by or contracts to provide nursing services for the medical facility and who:

(1) In accordance with the policy, if any, established by the medical facility:

(I) Reports to his or her immediate supervisor, in writing, that he or she does not possess the knowledge, skill or experience to comply with an assignment to provide nursing services to a patient; and

(II) Refuses to provide to a patient nursing services for which, as verified by documentation in the personnel file of the registered nurse, licensed practical nurse, nursing assistant or medication aide - certified concerning his or her competence to provide various nursing services, he or she does not possess the knowledge, skill or experience to comply with the assignment to provide nursing services to the patient, unless the refusal constitutes unprofessional conduct as set forth in chapter 632 of NRS or any regulations adopted pursuant thereto;

(2) ***In accordance with a policy adopted pursuant to section 15 of this act, requests to be relieved of, refuses or objects to a work assignment;***



(3) In good faith, reports to the medical facility, the Board of Medical Examiners, the State Board of Osteopathic Medicine, the State Board of Nursing, the Legislature or any committee thereof or any other governmental entity:

(I) Any information concerning the willful conduct of another registered nurse, licensed practical nurse, nursing assistant or medication aide - certified which violates any provision of chapter 632 of NRS or which is required to be reported to the State Board of Nursing;

(II) Any concerns regarding patients who may be exposed to a substantial risk of harm as a result of the failure of the medical facility or any agent or employee thereof to comply with minimum professional or accreditation standards or applicable statutory or regulatory requirements; or

(III) Any other concerns regarding the medical facility, the agents and employees thereof or any situation that reasonably could result in harm to patients; or

~~(3)~~ (4) Refuses to engage in conduct that would violate the duty of the registered nurse, licensed practical nurse, nursing assistant or medication aide - certified to protect patients from actual or potential harm, ~~including, without limitation,~~ conduct which would violate any provision of chapter 632 of NRS or *conduct* which would subject the registered nurse, licensed practical nurse, nursing assistant or medication aide - certified to disciplinary action by the State Board of Nursing.

2. A medical facility or any agent or employee thereof shall not retaliate or discriminate unfairly against an employee of the medical facility or a registered nurse, licensed practical nurse, nursing assistant or medication aide - certified who is employed by or contracts to provide nursing services for the medical facility because the employee, registered nurse, licensed practical nurse, nursing assistant or medication aide - certified has taken an action described in subsection 1.

3. A medical facility or any agent or employee thereof shall not prohibit, restrict or attempt to prohibit or restrict by contract, policy, procedure or any other manner the right of an employee of the medical facility or a registered nurse, licensed practical nurse, nursing assistant or medication aide - certified who is employed by or contracts to provide nursing services for the medical facility to take an action described in subsection 1.

4. As used in this section:

(a) "Good faith" means honesty in fact in the reporting of the information or in the cooperation in the investigation concerned.



(b) "Physician" means a person licensed to practice medicine pursuant to chapter 630 or 633 of NRS.

(c) "Retaliate or discriminate":

(1) Includes, without limitation, any of the following actions if taken solely because the employee, registered nurse, licensed practical nurse, nursing assistant or medication aide - certified took an action described in subsection 1:

(I) Frequent or undesirable changes in the location where the person works;

(II) Frequent or undesirable transfers or reassignments;

(III) The issuance of letters of reprimand, letters of admonition or evaluations of poor performance;

(IV) A demotion;

(V) A reduction in pay;

(VI) The denial of a promotion;

(VII) A suspension;

(VIII) A dismissal;

(IX) A transfer; or

(X) Frequent changes in working hours or workdays.

(2) Does not include an action described in sub-subparagraphs (I) to (X), inclusive, of subparagraph (1) if the action is taken in the normal course of employment or as a form of discipline.

Sec. 30. NRS 449.241 is hereby amended to read as follows:

449.241 As used in NRS 449.241 to 449.2421, inclusive, *and sections 2 to 24, inclusive, of this act* unless the context otherwise requires, the words and terms defined in NRS 449.2414, 449.2416 and 449.2418 *and sections 2 to 7, inclusive, of this act* have the meanings ascribed to them in those sections.

Sec. 30.3. NRS 449.2416 is hereby amended to read as follows:

449.2416 ~~["Nurse"]~~ *"Licensed nurse"* means a person licensed pursuant to chapter 632 of NRS to practice nursing, including, without limitation, a licensed practical nurse. The term does not include a certified nursing assistant or a medication aide - certified.

Sec. 30.6. NRS 449.242 is hereby amended to read as follows:

449.242 1. Each hospital located in a county whose population is 100,000 or more and which is licensed to have more than 70 beds shall establish a staffing committee to develop *a written policy as required pursuant to section 15 of this act and* a documented staffing plan as required pursuant to NRS 449.2421. The staffing committee must consist of:



(a) Not less than one-half of the total members *of the staffing committee* from the licensed nursing staff *and certified nursing assistants* who are providing direct patient care at the hospital; and

(b) Not less than one-half of the total members *of the staffing committee* appointed by the administration of the hospital.

2. *In developing the written policy and the staffing plan, the staffing committee shall consider, without limitation, the information received pursuant to paragraph (b) of subsection 5 of section 15 of this act regarding requests to be relieved of a work assignment, refusals of a work assignment and objections to a work assignment.*

3. The staffing committee of a hospital shall meet at least quarterly.

~~3.1~~ 4. Each hospital that is required to establish a staffing committee pursuant to this section shall prepare a written report concerning the establishment of the staffing committee, the activities and progress of the staffing committee and a determination of the efficacy of the staffing committee. The hospital shall submit the report on or before December 31 of each:

(a) Even-numbered year to the Director of the Legislative Counsel Bureau for transmission to the next regular session of the Legislature.

(b) Odd-numbered year to the Legislative Committee on Health Care.

Sec. 30.9. NRS 449.2421 is hereby amended to read as follows:

449.2421 1. As a condition of licensing, a health care facility located in a county whose population is 100,000 or more and which is licensed to have more than 70 beds shall make available to the Health Division a *written policy adopted pursuant to section 15 of this act*, a documented staffing plan and a written certification that the *written policy and the* documented staffing plan ~~is~~ *are* adequate to meet the needs of the patients of the health care facility. The documented staffing plan must include, without limitation:

(a) A detailed written plan setting forth ~~the~~ :

(1) *The* number, skill mix and classification of licensed nurses required in each unit in the health care facility, which must take into account the experience of the clinical and nonclinical support staff with whom the *licensed* nurses collaborate, supervise or otherwise delegate assignments; *and*

(2) *The number of certified nursing assistants required in each unit in the health care facility;*



(b) A description of the types of patients who are treated in each unit, including, without limitation, the type of care required by the patients;

(c) A description of the activities in each unit, including, without limitation, discharges, transfers and admissions;

(d) A description of the size and geography of each unit;

(e) A description of any specialized equipment and technology available for each unit; ~~and~~

(f) Any foreseeable changes in the size or function of each unit ~~+~~; and

(g) Protocols for adequately staffing the health care facility:

(1) In the event of an emergency, including, without limitation, mass casualties and a significant change in the acuity or number of patients;

(2) If applicable, in circumstances when a significant number of patients are diverted from another facility; and

(3) If a licensed nurse or certified nursing assistant is absent or refuses a work assignment pursuant to section 15 of this act.

2. A documented staffing plan must provide sufficient flexibility to allow for adjustments based upon changes in a unit of the health care facility.

3. The health care facility shall ensure that it is staffed in accordance with the documented staffing plan.

Secs. 31 and 32. (Deleted by amendment.)

Sec. 33. The Health Division of the Department of Health and Human Services shall not renew the license of any health care facility, as that term is defined in NRS 449.2414, if the health care facility has not submitted to the Health Division a written policy and a documented staffing plan as required by NRS 449.2421, as amended by section 30.9 of this act.

Sec. 34. The provisions of NRS 354.599 do not apply to any additional expenses of a local government that are related to the provisions of this act.

