

Proposed Registered Nurse Staffing Regulations for “Intensive Care Units”

The Massachusetts Health Policy Commission (HPC) was directed in Chapter 155 of the Acts of 2014 to promulgate regulations regarding registered nurse-to-patient ratios in intensive care units (ICUs). The HPC is in the process of developing such regulations and is currently scheduled to vote on final regulations at its June 10, 2015 meeting.

The HPC held two public hearings on the proposed regulations to provide an opportunity for the public and stakeholders to comment. At both hearings the Massachusetts Hospital Association (MHA) and the Organization of Nurse Leaders of Massachusetts and Rhode Island (ONL) testified and submitted formal written testimony on the proposed regulations. Former Senate President Pro Tempore and Chair of the Joint Committee on Health Care Finance, Richard Moore, who was in the Senate at the time that Chapter 155 was passed, also submitted written testimony. The Senator’s testimony supports the positions of MHA and ONL.

Below please find the background on Chapter 155, along with a brief description of the key concerns about certain provisions of the proposed regulations registered at the HPC hearings by hospital, community, and nurse leaders from across the state.

Background

Chapter 155 was not drafted to resolve patient care issues in Massachusetts hospitals’ ICUs. Rather, it was designed as a political resolution to a problem posed by two proposed public ballot questions. There is no evidence in the testimony before the Commission, public reports from federal or state regulatory agencies, or any other credible source that there are quality of care problems in the Commonwealth’s ICUs. In promulgating regulations to implement Chapter 155, we have urged the Commission not to take actions that will in fact create significant clinical, operational, and financial problems where none exist today.

All we have asked of the HPC is that it read and interpret Chapter 155 by referring to the actual language in the statute, and not, in the process of promulgating regulations, add to, or supplant what the Legislature has done.

Despite comments to the contrary from the Massachusetts Nursing Association (MNA) and its supporters, the record is clear and indisputable that:

- The ONL and MHA participated directly in the discussions that produced the language in Chapter 155;
- There were no legislative hearings on Chapter 155;
- There was no legislative debate on the bill in either the House or the Senate;
- Not one word from Chapter 155 was changed from the time the bill was created by the MHA, ONL, and the MNA, among others, to the time the bill was passed by the House and Senate.

Specific Issues in the Proposed Regulations

“At All Times” and “At Any Time”:

The HPC inserted the terms “at all times” and “at any time” into the proposed regulations even though these terms never appear in Chapter 155. Those words suggest that nurses must be present at every minute during a shift. The statute, by contrast, uses the term “patient assignment.” During the January 20th public meeting of the HPC Board, the HPC General Counsel clarified that the terms HPC inserted were intended to mean only that the staffing requirements applied on “every shift,” not at every moment during a shift. If these new terms are included in the final regulations, not only will they cause confusion for staff and hospitals, they will create very real and significant clinical, operational, and cost problems for hospitals. ***“At all times” and “at any times” should be not be used in the final regulations.***

Intensive Care Unit vs. NICU, PICU, Burn Unit, CCU:

Chapter 155 refers to a specific, existing Department of Public Health (DPH) regulation to define the term “intensive care unit.” The Chapter goes so far as to place quotation marks around the term “Intensive Care Unit” to demonstrate the Legislature’s intent to give this term a specific and precise meaning. The specifically referenced DPH regulation (105 CMR 130.020) defines “Intensive Care Unit” separately from Neonatal Intensive Care Units (NICU), Pediatric Intensive

Care Units (PICU), Burn Units (Burn), and Coronary Care Units (CCU). Yet, the HPC proposed regulations would apply the nurse staffing requirements to these additional units by treating NICUs, PICUS, Burn, and CCU hospital units as if they were included within 105 CMR 130.020's narrow definition of "intensive care unit." The proposed additions directly contradict the language of the statute and exceed the authority of the HPC. As a consequence, the proposed regulations, if adopted, would create significant obstacles to access for medically complex patients and create real significant clinical, operational, and financial problems for hospitals. ***The final regulation should not apply to NICUs, PICUs, Burn Units, or CCUs.***

Acuity System:

Chapter 155 calls for the use of an acuity system as part of the process of determining patient staffing needs. An acuity system is a complex tool: it will require a multi-disciplinary team of clinical and operational staff to identify the right clinical tool for their institution; to work to ensure appropriate integration and interoperability within the institution's IT system; and to ensure appropriate time for testing, validation, and employee education. Therefore, any implementation timeline required by the regulations must afford hospitals adequate time to plan for, budget for, and implement its acuity tool and the accompanying technology, including time to choose, test, validate, and educate staff on the system. ***The restrictive acuity tool timeline requirements in sections 8.06 and 8.07 of the proposed regulations should be struck. A more appropriate time frame for implementing the acuity tool system should be inserted in the proposed regulations.***

The mistaken notion of a staffing default:

Chapter 155 states that the "patient assignment for the registered nurse shall be 1:1 or 1:2 depending on the stability of the patient as assessed by the acuity tool and by the staff nurses in the unit, including the nurse manager or the nurse manager's designee when needed to resolve a disagreement." Contrary to the MNA's statements, there is no mention in Chapter 155 of a so-called "default staffing level of 1:1." If the legislation intended there to be a default staffing level, it would have been clearly stated. ***Absent specific legislative language to the contrary, the final regulation cannot impose a default staffing ratio, as doing so would be inconsistent with the statute.***