

## Important Information about New Regulations on the ICU Staffing Law and the Impact on ICU Nurses in Providing Care to Patients

The Health Policy Commission has approved final regulations underpinning the ICU Safe Patient Limits Law, which was enacted last year to ensure patients in Mass. hospital ICUs receive one-on-one care from their registered nurse, while allowing a nurse to take a second patient if and when it is deemed safe to do so. While the law is now in effect, the regulations established a staggered process for hospitals to follow in developing a tool nurses can use, known as an acuity tool, to assist them in determining when patients are stable enough to allow a two-patient assignment. Under the regulations, each hospital that is an academic medical center shall complete its acuity tool for NICUs by January 31, 2017, and for all other types of ICUs by March 31, 2016. The six academic medical centers include: Beth Israel Deaconess Medical Center, Boston Medical Center, Brigham and Women's Hospital, Massachusetts General Hospital, Tufts Medical Center and UMass Memorial Medical Center. All other hospitals must complete their acuity tools no later than January 31, 2017.

Unfortunately, the Massachusetts Hospital Association, in direct violation of the law and the explicit direction of the Health Policy Commission and the Department of Public Health, is claiming that the law is not in effect until the acuity tool process is complete, and many hospitals are adopting the MHA's illegal position. To aide nurses in complying with the law and to protect their license which obligates nurses to follow the law regardless of the actions of their employer, we have provided the following guidelines for nurses to ensure the safety of their patients:

- **No matter what your managers or administrators tell you, the law IS in effect, and has been since September 28, 2014.** Your license to practice nursing in the Commonwealth obligates you to follow this law and you can be held personally accountable for anything untoward that happens to your patients while you are working outside the dictates of the law.
- The law and the regulations apply to ALL acute care hospitals in the state both public and private and to ALL manner of ICUs as defined by the Department of Public Health, including NICUs, PICUs, CCUs, SICUs, MICUs, Burn Units, etc.
- The law requires that a staff nurse be assigned one patient at a time, with the option of accepting a second patient only if the nurse has assessed that BOTH patients are stable enough, and the nurse has the skill and resources, to allow a two patient assignment.
- If and when a DPH-certified acuity tool is available, the staff nurse must use the acuity tool to aid them in making their assessments. However, until the tool for your facility is developed and certified by DPH, the law dictates that it is the assessment of the staff nurses on the unit who have the authority to determine both the stability of the patients on the unit and the appropriate patient assignments for the nurses on the unit. If you don't feel safe taking a second patient, it is your right to refuse that assignment.
- The only time a nurse manager can be involved in decisions regarding patient assignments is when the staff nurses on the unit cannot agree on appropriate assignment. Then and only then can a nurse manager or supervisor be called in to assist the nurses in determining the assignment of patients on the unit.

- There are no exceptions to the law requiring that a nurse shall be assigned a 1:1 or 1:2 patient assignment. *“Notwithstanding any general or special law to the contrary, in all intensive care units 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.”* At no time does the law or the regulations allow a nurse to accept a third patient – **never**. This includes nurses’ who may be asked to assume the assignment for other nurses taking breaks and when nurses are transporting patients off the unit.
- At no time can hospitals board non ICU patients on the unit to allow a two or three patient assignment. Any patient on the ICU is subject to the law and the patient assignment is subject to assessment of the nurses on that unit.
- In documenting your assessment of the patient, we encourage nurses to include the patient assignment needs assessment (whether a 1:1 or 1:2 assignment is called for) in your nursing documentation. However, should management refuse to follow your assessment, you should immediately follow the steps below and if necessary, fill out and submit the Violation of the ICU Law form.
- If you and/or your colleagues assess your patients and believe a proposed patient assignment is in violation of the law, contact a manager or supervisor to inform them of the violation and request the staff and/or other resources necessary to comply with the law.
- If the manager or supervisor is unwilling/unable to provide adequate staffing and/or resources to prevent a violation, or if they persist in overruling your patient assessment and force you to accept more patients, you must under your license make a decision to refuse the assignment if you believe it is unsafe or if you choose to take the assignment (you are responsible for the outcomes) you should inform management that you will report the violation to the State’s Health Policy Commission, the Department of Public Health, and the office of the Attorney General.
- Fill out the Violation of the ICU Law form (which is available on the MNA website on the ICU Law page at [www.massnurses.org](http://www.massnurses.org). Copies of the form should also be available on your unit or can be obtained from your union rep. The MNA will file this complaint with the Health Policy Commission, the Department of Public Health, and the office of the Attorney General or take other legal actions as appropriate.

## ICU Staff Nurse Participation in the Development of an Acuity Tool

- Under the law and new regulations, each hospital is required to include front line ICU staff nurses on a committee to help develop the acuity tool or tools (i.e. if different tools are needed for adult, NICUs, PICUs) for each unit in each hospital. In fact, the regulations specify that each acuity tool committee at a hospital must be composed of “at least 50 percent staff nurses in the ICU in which the acuity tool will be deployed who are not managers.”
- The MNA has informed management at each hospital where the nurses are represented by MNA that the local union will be working with its members to identify and support ICU nurses who wish to participate on the committee creating the acuity tool for their hospital. The work of the committee does not negate any additional obligations the employer has including, but not limited to, bargaining and providing any and all information necessary to appropriately represent members of the bargaining unit. If you are interested in joining such a committee, contact your union rep.

## Documentation of Violation of MGL Chapter 111, Section 231 re: ICU Staffing

### BACKGROUND:

A new law requiring safe patient assignment limits for ICU nurses is now in effect, **and all hospitals** and nurses must comply with the law. In **ALL ICUs** in Massachusetts, the law requires that a staff nurse be assigned one patient at a time. **ONLY if the staff nurse has assessed** that it is safe for both patients, may a nurse ACCEPT the care of a second patient. IF a DPH-certified acuity tool is available, the staff nurse must use the acuity tool to aid them in making their assessments. **At no time** may a staff nurse accept the care of three (3) or more patients at a time.

### INSTRUCTIONS:

- 1. NOTIFY MANAGER AND REQUEST SOLUTION:** First, if you think that a patient assignment is in violation of the law, contact a manager or supervisor to inform them of the violation, and request the staff and/or other resources necessary to comply with the law.
- 2. INFORM THEM VIOLATION WILL BE REPORTED:** Second, if the manager or supervisor is unwilling/unable to provide adequate staffing and/or resources to prevent a violation or if they persist in overruling your patient assessment and force you to accept more patients, inform them you intend to report the violation to the State's Health Policy Commission (HPC) and the Department of Public Health (DPH).
- 3. SUBMIT FORM:** Third, fill out this form and the MNA will file a complaint detailing the violation with the HPC, DPH, and the Attorney General.

### HOSPITAL DEMOGRAPHICS AND CONTACT INFORMATION

Name of hospital: \_\_\_\_\_ Name of unit: \_\_\_\_\_  
 Date and time violation began: \_\_\_\_\_ Room/bed numbers involved in violation: \_\_\_\_\_  
 Approximate duration (in hours) of the violation: \_\_\_\_\_ Name and title of manager notified about the violation: \_\_\_\_\_  
 Name of nurse submitting this form: \_\_\_\_\_ Email or best phone number: \_\_\_\_\_

### TYPE OF AND DESCRIPTION OF CIRCUMSTANCES

#### 1. Type of Violation (please check one of the following):

- 1:1 -- A patient assigned to a nurse is assessed as 1:1 but the nurse has responsibility for two (2) or more patients.
- 2:1 -- Both patients assigned to a nurse have been assessed as stable enough to be 2:1 but the nurse has responsibility for three (3) or more patients

#### 2. Description of circumstances (please check all that apply):

- Inadequate provision of staff nurses forced nurse to accept care of additional patient(s) despite assessment
- No staff coverage provided for nurse on break
- No staff coverage provided for nurse on meal break
- No staff coverage provided while nurse is transporting patient
- No staff coverage while nurse involved in lengthy bedside procedure
- No staff coverage provided while nurse is involved in code or emergency response
- Patient acuity/stability worsens and becomes 1:1 but no staff coverage provided to split 2:1 assignment
- Worsening critical environmental and patient condition factors on the unit forced reassessment of a 2:1 patient to 1:1 but no staff coverage provided to split assignment
- Nurse leaves due to illness or injury during shift with no staff replacement provided
- Other rationale (please describe in comments below)

#### 3. Was a DPH certified acuity tool available and used to aid the nurse in assessing the patients' stability? Yes No

#### 4. What was above named manager/administrator's response when they were notified? \_\_\_\_\_

#### 5. If this is an instance of inadequate staffing to cover patient assignments for a break, did the nurse choose to skip the break to avoid violating the law? Yes No N/A

#### 6. Please provide additional description or comments about this violation: \_\_\_\_\_

# The Commonwealth of Massachusetts

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**In the Year Two Thousand Fourteen**

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An Act relative to patient limits in all hospital intensive care units.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

SECTION 1. Chapter 111 of the General Laws is hereby amended by inserting after section 229 the following 2 sections:-

Section 231. For the purposes of this section, the term “intensive care units” shall have the same meaning as defined in 105 CMR 130.020 and shall include intensive care units within a hospital operated by the commonwealth.

Notwithstanding any general or special law to the contrary, in all intensive care units 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.

The acuity tool shall be developed or chosen by each hospital in consultation with the staff nurses and other appropriate medical staff and shall be certified by the department of public health. The health policy commission shall promulgate regulations governing the implementation and operation of this act including: the formulation of an acuity tool; the method of reporting to the public on staffing compliance in hospital intensive care units; and the identification of 3 to 5 related patient safety quality indicators, which shall be measured and reported by hospitals to the public.

958 CMR 8.00: PATIENT ASSIGNMENT LIMITS FOR REGISTERED NURSES IN INTENSIVE CARE UNITS IN ACUTE HOSPITALS

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8.01: General Provisions

Scope and Purpose. 958 CMR 8.00 governs the implementation of M.G.L. c. 111, §231, which establishes Patient Assignment limits for Registered Nurses in Intensive Care Units in Acute Hospitals licensed by the Massachusetts Department of Public Health and in hospitals operated by the Commonwealth of Massachusetts, including the process for selecting or developing the Acuity Tool and required elements of the Acuity Tool.

8.02: Definitions

As used in 958 CMR 8.00 the following words mean:

Acute Hospital. The teaching hospital of the University of Massachusetts Medical School, any hospital licensed by the Department of Public Health pursuant to M.G.L. c. 111, § 51 or hospital operated by the Commonwealth, and which contains a majority of medical-surgical, pediatric, obstetric, and maternity beds as defined by the Department.

Acuity Tool. A decision support tool using a method for assessing patient stability for the ICU Patient according to a defined set of indicators (including Clinical Indicators of Patient Stability and Indicators of Staff Nurse Workload), and used in the determination of a Patient Assignment.

Clinical Indicators of Patient Stability. Indicators of ICU Patient stability related to the physiological status and clinical complexity and related scheduled procedures, medications and therapeutic supports appropriate to the ICU Patient population in the ICU in which the Acuity Tool will be deployed.

Commission. The Health Policy Commission established in M.G.L. c. 6D.

Critical Environmental Factors. Factors relevant to the particular ICU in which the Acuity Tool will be deployed that may affect the ability of Staff Nurses to care for one or two ICU Patients, such as: physical environment of the ICU, including visibility of patient/monitoring equipment; nursing skill mix, competency and familiarity with the ICU; availability of patient care equipment and technology; and availability of medical, ancillary and support staff in the ICU (e.g., physician, pharmacist, IV team/respiratory therapist, nurse practitioner, clinical nurse specialist, physician assistant, unit secretary, sitters, aides/technicians, staff to operate patient care equipment and technology, patient transport services, travel team/coverage).

Department. The Massachusetts Department of Public Health established in M.G.L. c. 17, § 1.

Indicators of Staff Nurse Workload. Indicators of Staff Nurse workload associated with caring for the ICU Patient appropriate to the ICU Patient population in the ICU in which the Acuity Tool will be deployed, such as: patient age, including gestational age as applicable, and cognitive/functional ability; patient and family communication skills and cultural/linguistic characteristics; need for patient and family education; family and other support for the patient; need for care coordination; transitional care and discharge planning required for the patient.

Intensive Care Unit (“ICU”). A unit physically and identifiably separate from general routine and other patient care areas, in which are concentrated special equipment and skilled personnel for the care of critically ill inpatients requiring immediate and concentrated continuous care and observation, and which meets the Medicare requirements in 42 CFR 413.53(d) for intensive care type inpatient hospital units, licensed by the Department, and shall include intensive



care unit, coronary care unit, burn unit, pediatric intensive care unit and neonatal intensive care unit, as defined in 105 CMR 130.020, however named by the Acute Hospital, and any such unit in a hospital operated by the Commonwealth.

ICU Patient. A patient occupying a bed in an ICU.

Nurse Manager. A nurse with management responsibility for nursing services for the ICU.

Patient Assignment. The assignment of a Staff Nurse to care for specified ICU Patient(s), consistent with the education, experience and demonstrated competence of the Staff Nurse, the needs of the ICU Patient(s), and the requirements of 958 CMR 8.00.

Registered Nurse. A nurse who meets the criteria for licensure under M.G.L. c. 112, § 74 and 244 CMR 8.00, and who holds a valid license from the Massachusetts Board of Registration in Nursing to engage in the practice of nursing in Massachusetts as a Registered Nurse.

Shift. A designated period of work time within the ICU.

Staff Nurse. A Registered Nurse providing direct patient care in an ICU.

### 8.03: Applicability

958 CMR 8.00 applies to Acute Hospitals licensed by the Department to provide service(s) in ICUs, as defined in 958 CMR 8.02, and to hospitals operated by the Commonwealth and authorized to provide ICU service(s).

### 8.04: Staff Nurse Patient Assignment in Intensive Care Units

- (1) In all ICUs, the Patient Assignment for each Staff Nurse shall be one or two ICU Patients depending on the stability of the ICU Patient as assessed pursuant to 958 CMR 8.05.
- (2) The maximum Patient Assignment for each Staff Nurse may not exceed two ICU Patients.
- (3) Nothing in 958 CMR 8.00 prohibits the assignment of more than one Staff Nurse to an ICU Patient.

### 8.05: Assessment of Patient Stability

- (1) For purposes of implementing 958 CMR 8.04, the Staff Nurse assessing the ICU Patient shall assess the stability of the ICU Patient utilizing:
  - (a) The exercise of sound nursing assessment and judgment within the parameters of the Staff Nurse's continuing education and experience; and
  - (b) The Acuity Tool developed or selected by the Acute Hospital and certified by the Department, pursuant to 958 CMR 8.00.
- (2) If the Staff Nurse assessing the ICU Patient determines within the exercise and scope of sound nursing assessment and judgment within the parameters of the Staff Nurse's continuing education and experience that the ICU Patient's stability requires a different Staff Nurse-to-patient ratio than that indicated by the Acuity Tool, the Nurse Manager or the Nurse Manager's designee shall resolve the disagreement between the Acuity Tool and the Staff Nurse's assessment, in consultation as appropriate with the other Staff Nurses in the ICU and taking into account nursing skill mix and patient census in the ICU and other Critical Environmental Factors, and shall determine the appropriate Patient Assignment.
- (3) The Staff Nurse assessing the ICU Patient shall assess the stability of the ICU Patient using the Acuity Tool at a minimum:
  - (a) Upon the ICU Patient's admission or transfer to the ICU;
  - (b) Once during a Shift; and
  - (c) At other intervals or circumstances as specified in the Acute Hospital's policies and procedures established pursuant to 958 CMR 8.0(6)(3)(a).
- (4) Nothing in this section shall limit the application of relevant state or federal law to Registered Nurses, including M.G.L. c. 112, § 80B, 244 CMR 3.00, and 244 CMR 9.00.

### 8.06: Development or Selection and Implementation of the Acuity Tool

- (1) Each Acute Hospital shall develop or select an Acuity Tool for each ICU that meets the requirements of 958 CMR 8.00, in order to:

- (a) Support the determination of whether each ICU Patient requires care by one or more Staff Nurses, or by a Staff Nurse assigned to care for no more than two ICU Patients; and
  - (b) Address the unique care needs and circumstances of the patient population in and physical environment of each ICU at the Acute Hospital.
- (2) Each Acute Hospital shall establish and document the process for development or selection of the Acuity Tool to be deployed in each ICU, which shall include but not be limited to the following required elements:
- (a) Formation of an advisory committee to make recommendations to the Acute Hospital on the development or selection and use of the Acuity Tool to be deployed in each ICU, which committee shall be composed of at least 50 percent Staff Nurses in the ICU in which the Acuity Tool will be deployed who are not Nurse Managers, together with other members selected by the Acute Hospital including but not limited to representatives of nursing management, and other appropriate ancillary and medical staff;
  - (b) A process for the advisory committee to make recommendations on the required elements of the Acuity Tool as set forth in 958 CMR 8.07 and other considerations for the use of the Acuity Tool including but not limited to the following:
    - 1. The defined set of indicators to be assessed by the Acuity Tool, including Clinical Indicators of Patient Stability and other Indicators of Staff Nurse Workload;
    - 2. A method for scoring the defined set of indicators and how scores are tabulated and used in the determination of whether each ICU Patient requires care by one or more Staff Nurses, or by a Staff Nurse assigned to care for no more than two ICU Patients; and
    - 3. Critical Environmental Factors.
  - (c) A process for Staff Nurses to participate in the testing of, validation of and recommendations for revision to the Acuity Tool prior to implementation; and
  - (d) A process for the Acute Hospital to address and respond to recommendations of the advisory committee regarding the selection or development and use of the Acuity Tool pursuant to 958 CMR 8.06.
- (3) Each Acute Hospital shall develop written policies and procedures for implementation of the Acuity Tool to be deployed in each ICU, which shall include but not be limited to:
- (a) Assessment of patient stability and how the resulting Acuity Tool score will be used to support the determination of the appropriate Patient Assignment in the ICU, consistent with the requirements of 958 CMR 8.00; and
  - (b) Periodic review and evaluation of the implementation of the Acuity Tool.
- (4) Within the requirements of 958 CMR 8.06, nothing shall prevent an Acute Hospital with multiple ICUs from seeking administrative efficiency in the development or selection of Acuity Tools by, for example, duplicating non-Staff Nurse members selected by the Acute Hospital pursuant to 958 CMR 8.06(2)(a) on advisory committees or considering a common format or platform for Acuity Tools used in the Acute Hospital.

#### 8.07: Required Elements of the Acuity Tool

Each Acute Hospital shall develop or select an Acuity Tool that meets the following minimum requirements:

- (1) The Acuity Tool shall be in writing either in electronic or hardcopy format;
- (2) The Acuity Tool shall be tailored to the unique care needs and circumstances of the patient population in the ICU in which the Acuity Tool is deployed;
- (3) The Acuity Tool shall include a method for scoring a defined set of indicators, which shall include Clinical Indicators of Patient Stability and other Indicators of Staff Nurse Workload; and
- (4) Other requirements as may be specified in guidance of the Commission.

#### 8.08: Records of Compliance

- (1) Development or Selection of Acuity Tool(s). Each Acute Hospital shall document, retain for a minimum period of ten years and provide to the Department and the Commission upon request, the following records related to the development or selection of the Acuity Tool required by 958 CMR 8.06(2):
  - (a) Membership of the advisory committee including name and title of members;

- (b) Minutes from meetings of the advisory committee; and
  - (c) The Acute Hospital's rationale for selection or development of the Acuity Tool including how the Acute Hospital addressed recommendations of the advisory committee and the decision to include or exclude certain Clinical Indicators of Patient Stability and other related Indicators of Staff Nurse Workload, and how Critical Environmental Factors in 958 CMR 8.06(2)(b)(3) were taken into account in the selection and the method for scoring of the indicators.
- (2) Staffing Compliance. Each Acute Hospital shall document and retain for a minimum period of ten years the results of the assessment of ICU Patient stability for each ICU Patient and Patient Assignment pursuant to 958 CMR 8.04 and 8.05.

#### 8.09: Acuity Tool Certification and Compliance

Acute Hospitals shall comply with the requirements for certification of an Acuity Tool and compliance with M.G.L. c. 111, § 231 and 958 CMR 8.00, as established by the Department.

#### 8.10: Public Reporting on Nurse Staffing Compliance

- (1) Each Acute Hospital shall report to the Department, in the form and manner specified by the Department, reports of Staff Nurse-to-patient ratios by ICU; and
- (2) Each Acute Hospital shall post the reports provided to the Department pursuant to 958 CMR 8.10(1) on the Acute Hospital's website, or as may be specified in guidance of the Commission.

#### 8.11: Collection and Reporting of Quality Measures

Each Acute Hospital shall:

- (1) Report the ICU-related quality measures specified in guidance of the Commission;
- (2) Report the quality measures for each ICU to the Department in the form and manner specified by the Department; and
- (3) Post the reports provided to the Department pursuant to 958 CMR 8.11(2) on the Acute Hospital's website, or as may be specified in guidance of the Commission.

#### 8.12: Certification Timeline

Each Acute Hospital shall comply with the requirements of the Department for certification of an Acuity Tool for each ICU by the dates below, or as may be otherwise specified in the Department's requirements for certification:

- (1) Each Acute Hospital that is an academic medical center, as the term is used by the Center for Health Information and Analysis, shall comply with the requirements of the Department for certification of an Acuity Tool for each neonatal intensive care unit no later than January 31, 2017, and for all other ICUs no later than March 31, 2016.
- (2) All other Acute Hospitals shall comply with the requirements of the Department for certification of an Acuity Tool for each ICU no later than January 31, 2017.

#### 8.13: Severability

If any section or portion of 958 CMR 8.00 or the applicability thereof is held invalid or unconstitutional by any court of competent jurisdiction, the remainder of 958 CMR 8.00 or applicability thereof to other persons, entities, or circumstances shall not thereby be affected.

#### REGULATORY AUTHORITY

958 CMR 8.00: MGL c. 111, § 231.