



STATE OF NEW YORK DEPARTMENT OF HEALTH

433 River Street, Suite 303, Troy, New York 12180-2299

Richard F. Daines, M.D.
Commissioner

Wendy E. Saunders
Executive Deputy Commissioner

October 30, 2008
08-07

Dear Chief Executive Officer:

This letter is written to alert hospitals of two legislative amendments that will impact hospital operations and specifically nurse staffing. Effective October 5, 2008, Public Health Law is amended to mandate a circulating nurse in each operating room, and effective July 1, 2009, Education and Labor Law will be amended to limit the consecutive hours nurses can be required to work. Hospitals should take steps to evaluate staffing levels and nurse training initiatives to ensure that adequate staff are in place to meet needs in accordance with these requirements, as described below.

Chapter 158 of the Laws of 2008, effective October 5, 2008, will require that a Registered Nurse be assigned and physically present in the operating room when surgery is being performed. This amendment supercedes current regulations at 405.12(a)(1)(ii) that allowed the circulating nurse to be “immediately available” in the operating suite. Department regulations will be amended consistent with the statute to specify that the primary assignment of a circulating nurse will be in one operating room for the duration of a surgical procedure. Departures from the operating room would occur only under limited circumstances including but not specifically limited to, emergency staffing needs outside of the operating room, as needed for a short personal break, or as needed to comply with the work rules of the facility. In the event there is a need to relieve the circulating nurse from his/her primary assignment in the operating room, the hospital is responsible to assign Registered Nurse to assume the circulating duties during the operative procedure.

Hospitals are required to comply with the provisions specific to circulating nurse staffing effective October 5, 2008. The Department will initiate steps through the formal rule making process to amend current regulations to reflect this change. A copy of this legislation is attached for your reference.

Chapter 493 of the Laws of 2008, effective July 1, 2009, will limit the consecutive hours of work for Registered Nurses and Licensed Practical Nurses by eliminating mandatory overtime and amending the definition in Education Law for patient abandonment. A copy of this legislation is attached for your reference. Health care facilities shall not require Registered Nurses and Licensed Practical Nurses to work more than the regularly scheduled work hours except in emergency situations as defined in the law. The provisions of the law, however, do not prohibit a Registered Nurse or a Licensed Practical Nurse from voluntarily agreeing to work overtime as otherwise authorized by

facility policy and State practice parameters (New York State Education Department Practice Guideline attached).

Hospitals are encouraged to review the provisions of each law and distribute pertinent information to key hospital staff. Any questions regarding this letter or the referenced requirements should be directed to this office at (518) 402-1003.

Sincerely,

A handwritten signature in cursive script that reads "Mary Ellen Hennessy". The signature is written in black ink and is positioned centrally below the word "Sincerely,".

Mary Ellen Hennessy
Deputy Director
Division of Certification & Surveillance

Attachments