

Beyond Unions' "Safe Staffing" Rhetoric

Twenty years ago, with robust advocacy by the California Nurses Association (CNA), Service Employees International Union (SEIU), and other labor unions, California passed first-of-its-kind legislation mandating nurse-to-patient staffing ratios in every hospital in the state as a way to improve patient safety. Although the legislation was not fully implemented until 2004, two decades after AB 394 became law, California remains the only state to have enacted such comprehensive legislation.

Some states have implemented regulatory measures addressing staffing while others have passed tamped-down legislative measures limiting the staffing mandate to specific hospital units/departments. Labor unions like National Nurses United (NNU) also have been lobbying Congress's labor-friendly members for a federal staffing mandate. But no matter where unions are pushing staffing legislation, there is one common message they are delivering to legislators – hiring more nurses is the solution to patient care issues.

Below is a brief overview on the status of some efforts to secure legislatively mandated nurse-to-patient ratios, why mandated staffing isn't the solution and what your organization can do to shape messaging on the issue.



CALIFORNIA

Not only was California the first and only state to pass comprehensive legislation mandating nurse staffing ratios, the California Legislature passed legislation this year to expand the existing law.

SB 227 is a regurgitated version of a bill from California's last legislative session that was actually passed and sent to then-Governor Jerry Brown for signature. Gov. Brown vetoed it. But a push from unions and other supporters resurrected the bill this year. Gov. Brown's departure and Gov. Gavin Newsome's election gave supporters hope for the legislation. And supporters were right: Gov. Newsome signed SB 227 into law on October 12, 2019. It will take effect in January 2020.

SB 227 establishes new fines/penalties specifically for hospitals that repeatedly fail to comply with staffing ratios established in the original legislation. The legislation does not change or increase any fines or penalties that already exist for staffing violations – specifically, \$15,000 for a first violation and \$30,000 for each subsequent violation.

The Assembly also passed an amendment that reduced the period of time that must elapse between violations for subsequent violations to be treated as first violations – this time period was reduced from six years to three years.



ILLINOIS

In Illinois, advocates believed at least one of two House bills, HB 2604, the Safe Patient Limits Act, or HB 3585, the Hospital Patient Protection Act, had a good chance of making it to the Governor's desk. Both bills were modeled after the California law; however, HB 3585 was the more egregious of the two since it included ratios even more burdensome than California's.

By most accounts, HB 2604 is viewed as the primary vehicle to move staffing legislation. The bill includes language allowing for a \$25,000 per day fine for facilities found out of compliance. And, according to the bill, these fines start as soon as the Illinois Department of Public Health issues a written notice of the violation.

HB 2604 made its way through the committee process in the spring but lost momentum due to an advocacy push from powerful groups who opposed it. The other bill, HB 3585, never made any real headway in the legislative process. Advocates indicated that if legislative efforts failed this year, they would continue to push for their passage next year.



MASSACHUSETTS

Massachusetts is one state that has actively been trying to pass comprehensive staffing ratios for years, mostly due to the relentless efforts of the Massachusetts Nurses Association (MNA).

Following a massive state ballot defeat last year that would have mandated staffing ratios exceeding the requirements of the California law, MNA quickly regrouped and changed tactics. In January 2019, MNA filed a bill called The Workforce Development and Patient Safety Act (S 1255/H 2004) with the help of two Massachusetts state legislators. MNA claims the bill was filed “to clear up the confusion and misinformation caused by last year’s intense debate over the issue of safe patient limits for nurses” by funding independent research that would inform stakeholders and policy makers in making decisions about staffing levels.

The bill states that the research should be completed no later than January 1, 2022 and released to the public no later than 12 months from the commencement of each study. The state would then be required to develop a plan and timeframe to implement the best practice limits as well as other recommendations established in the study, including patient and public awareness. The enforcement mechanisms include, but are not limited to, the ability to assess fines for non-compliance.

The Joint Committee on Public Health held a hearing on September 24, 2019. However, to date, there has been no further action.



NEW YORK

Similar to the proposed Massachusetts research initiative, the state of New York authorized a safe staffing study as part of the state budget in 2019. The state health department was required to begin the study and collect input from stakeholders starting May 1 and to report its findings back to the legislature by December 31.

Once the findings are received and processed, pro-labor politicians who control the state government’s legislative and executive branches may look to pass some form of mandated staffing levels.



PENNSYLVANIA

The introduction of two companion bills in Pennsylvania that mandate staffing ratios could be cause for concern. Although the political dynamics in the House and Senate could create a hurdle for the passage of staffing legislation, bills in the state's General Assembly have picked up bi-partisan support. This has prompted unions like SEIU Healthcare Pennsylvania to showcase their advocacy efforts in an attempt to maintain momentum.

As of the date of this printing, four Republicans and one independent support the bill, which could make a potential vote close; the resignation of a Republican senator in September 2019 decreased the overall number of voting members.

HB 867 was introduced by the Republican chairman of the Health and Human Services Committee. The bill has picked up additional Republican co-sponsors, which give it the necessary votes for passage – assuming Democrats vote along party lines. However, neither bill has had any committee action or votes thus far, a key step in the legislative process.

Considering a pro-labor governor who has declared he would sign any staffing bill brought to his desk, Pennsylvania health systems and hospitals should monitor this situation closely.

NATIONAL LEGISLATION

From labor unions' perspectives, mandating staffing ratios nationally for all 50 states would be the best-case scenario. They wouldn't have to fight state-to-state to push their agenda.

Two staffing ratio bills have been introduced in the 116th Congress. In May 2019, Congresswoman Jan Schakowsky (D-IL) and U.S. Senator Sherrod Brown (D-OH) introduced companion bills in the House and Senate called the Nurse Staffing Standards for Hospital Patient Safety and Quality Care Act.

Neither bill has seen any committee action in 2019, and at this time, there is no indication that any will take place this year or during this Congress's second session in 2020.

Mandated Staffing Efforts Ignore the Real Issue

The dangerous part about the push to mandate staffing ratios as a way to improve patient safety is that it oversimplifies the situation hospitals face and ignores the broader issue – that there simply aren't enough nurses to meet demand.

Figures updated this year by The American Association of Colleges of Nursing (AACN) highlight the many reasons why a nursing shortage "perfect storm" exists, and it can be boiled down to three things: 1) Changing patient demographics; 2) Changing nursing demographics; and 3) Curbed enrollments in nursing programs due to a shortage of nursing school faculty and resources.

When you consider the fact that the population of U.S. residents 65 and older is expected to double from 2012 to 2050¹, it's obvious that, as a group, Baby Boomers' health care needs will also grow.

Complicating the issue of the aging Boomer population is that many in the existing nursing force are Boomers themselves. A 2015 report² showed that 40 percent of nurses are over the age of 50 with 1 million expected to retire by 2025. The same report shows that in the 10-year period from 2010 and 2020, the number of nurses leaving the workforce was expected to double from 40,000 to 80,000.

According to the U.S. Bureau of Labor Statistics Employment Projections 2016-2026³, the RN workforce is expected to grow from 2.9 million in 2016 to 3.4 million in 2026, an increase of 438,100 or 15 percent. The Bureau also projects the need for an additional 203,700 new RNs each year through 2026 to fill newly created positions and to replace retiring nurses.

AACN says that a shortage of nursing school faculty and resources are curbing enrollments in nursing programs making it hard to meet projected demands for nurses. AACN points to a 2018-2019 report⁴ revealing that 75,000 qualified applicants were turned away from higher education programs due to a lack of personnel and resources.

The bottom line: The solution is not hiring more nurses. The solution is getting more nurses into the nursing field. Health systems' and hospitals' messaging to legislators should reflect that.

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*Cited online – AACN website

Best Practices to Reinforce Your Organization's Public Affairs Efforts

What steps should your organization be taking to minimize any legislative traction on staffing or other issues that may adversely affect your operations? Individual organizations will likely have their own established approach when it comes to how legislative initiatives are handled; however, IRI's public affairs team recommends recentralizing the focus of your message on the staffing issue while reinforcing the basics of your government relations approach to enhance the effectiveness of your strategy.

SOLIDIFY INTERNAL COMMUNICATION AND COLLABORATION

Hold regular meetings between your executive, HR and your government relations teams (assuming you have one) to share information and collaborate efforts.

- Your HR department should be relaying its internal staffing experiences to the government relations team to provide a full understanding of what these staffing experiences mean for the hospital
- Likewise, your government relations staff should collect information from the legislature and the public and report it to HR
- Collaboration is key to staying on message

BE PREPARED

Even if legislation isn't moving or expected to move, stay ahead on the messaging; don't wait until a bill picks up steam to address it.

- Prepare talking points, handouts and one-pagers to get your specific message out; familiarize those who are interacting publicly on your behalf with facts and stories to back up your organization's claims
- If your internal philosophy is not to call attention to legislation that is not moving, at least prepare information for release for when it becomes time to actively oppose the bill

TALK TO ELECTED OFFICIALS

Your government relations team (or, if you don't have one, your executive team) should maintain contact with legislative and staff contacts about pending pieces of legislation and where the hospital stands.

- Keep a constant drum beat with legislators by providing frequent updates on how your hospital is addressing staffing issues
- Emphasize the positive by sharing anecdotes with legislators about your hospital's efforts to handle staffing issues, as well as your support of initiatives or legislation that attempt to address the root cause of the problems you are facing, such as nursing shortages
- Ask legislators how you can work with them to promote legislation that encourages more people to choose nursing as a career option

COORDINATE WITH STATE AND NATIONAL ASSOCIATIONS

In many cases, state and national associations will be responsible for most of the lobbying efforts. That's one of the reasons why the organizations exist in the first place. Your input and feedback can be valuable to them.

- Reach out to these organizations and get a better sense of what they know and how they are working these bills; determine if there is anything you can or should be doing to supplement their efforts
- If so, make an internal decision on whether to add your hospital's voice to the public conversation

1 U.S. Census Bureau report on An Aging Nation: The Older Population in the United States, May 2014

2 According to a report in the September 21, 2015 issue of Science Daily

3 According to the Bureau of Labor Statistics' Employment Projections 2016-2026 from the AACN website

4 According to AACN's report on 2018-2019 Enrollment and Graduations in Baccalaureate and Graduate Programs in Nursing