Under new law, Massachusetts hospitals must limit the number of patients assigned to a nurse working in an intensive care unit ("ICU") to no more than two. "An Act relative to patient limits in all hospital intensive care units," signed by Governor Deval Patrick on June 30, 2014, applies to ICUs in all Massachusetts hospitals. The staffing-ratio legislation was backed by the Massachusetts Nurses Association ("MNA"), a labor union representing nurses and other health care workers.

The new law calls for all hospitals, in consultation with staff nurses and other appropriate medical staff, to create an acuity tool to assess the stability of ICU patients. The acuity tool must be certified by the Massachusetts Department of Public Health.

Using the acuity tool, ICU patient assignments for registered nurses would be set at one or two patients per nurse 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. Thus, the law expressly provides staff nurses with input into patient assignments in the ICU.

It appears a hospital may have to call in an additional nurse if acuity will not allow a nurse to care for two patients and a patient or patients otherwise would be left unattended. The law is not entirely clear on this subject.

The Massachusetts Health Policy Commission will issue regulations governing implementation of the new law. The regulations will include guidance on the formulation of the acuity tool, the method of reporting to the public on staffing compliance in hospital ICUs, and the identification of three to five related patient safety quality indicators, which hospitals will measure and report to the public.

The law was enacted following discussions between legislators and representatives of the MNA. The MNA agreed that if Governor Patrick signed the new law by July 2, it would withdraw its two ballot initiatives — the Patient Safety Act and the Hospital Profit Transparency and Fairness Act (these called for nurse-to-patient staffing ratios throughout all units in Massachusetts hospitals and disclosure of certain hospital financial information, such as chief executive compensation and funds held in offshore accounts). Clearly, the MNA was concerned about losing the two initiatives and settled for the new law. In a message to members about the new law, the MNA wrote, “[T]his decision was made after the Board of Directors carefully weighed all the factors, including the risk if we were to lose the ballot vote in November. . . . Were we to lose the ballot in November, we would be precluded from filing these ballots for SIX years; and once we had overstepped the legislature and rejected their attempt to create some form of limits, the likelihood of their moving a similar measure in the coming years would be less than zero.”

While the MNA is withdrawing its ballot initiatives, it is not abandoning efforts to enact broader legislative staffing ratios. Rather, the MNA has stated that it intends to put both proposed laws before the Legislature and that it retains the option to return to ballot initiatives in the next election cycle if the legislative option is unsuccessful. The MNA also has pointed out to its members that California’s broad staffing ratio legislation began with a law establishing ratios in the ICU.
Therefore, Massachusetts hospitals should be on the watch for further MNA-backed efforts to establish staffing ratios across all units. We will continue to monitor and provide updates on developments. Employers are encouraged to contact their Jackson Lewis attorney or any other Jackson Lewis attorney about the new law.

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