

CIRCULATING NURSES, ETC.

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Senate Bill 605 as passed by the Senate

Sponsor: Sen. Roger Kahn, M.D.

House Committee: Health Policy

Senate Committee: Health Policy

Complete to 10-18-10

A SUMMARY OF SENATE BILL 605 AS REPORTED BY HOUSE COMMITTEE

The bill would require a freestanding surgical outpatient facility or hospital that performs surgical procedures in an operating room to establish policies and procedures regarding surgical privileges, maintenance of operating rooms (ORs), and evaluation of the surgical patient; require these facilities to meet federal regulations and guidelines as they pertain to registered professional nurses (RNs) performing circulating duties in the OR; and to permit facilities to assign a qualified RN to be present in the operating room for the duration of a surgical procedure.

Specifically, Senate Bill 605 would add a new section to the Public Health Code (MCL 333.20135) addressing policies and procedures used in operating rooms and the use of circulating nurses. According to the Association of periOperative Registered Nurses (AORN), a circulating nurse is an RN who "circulates" throughout the OR – outside of the sterile field. The circulating nurse is responsible for managing the nursing care of the patient and coordinating the needs of surgical team members and other care providers needed for each procedure. Duties include a preoperative patient assessment, developing and implementing an individualized plan of care, and continuously evaluating patient outcomes during the surgical procedure.

Required actions

A state-licensed freestanding surgical outpatient facility or hospital that performs surgical procedures in an operating room of that facility would be required to do both of the following:

**** Develop and maintain effective policies and procedures regarding surgical privileges, maintenance of the operating rooms, and evaluation of the surgical patient.**

**** Meet the requirements of the conditions for participation in the Medicaid and Medicare programs for surgical services under federal regulations (42 CFR 482.51) as they apply to RNs performing circulating duties in the operating room and as provided in the interpretive guidelines published by the U.S. Department of Health and Human Services (DHHS).**

(42 CFR 482.51, referenced in the bill, states that qualified RNs "may perform circulating duties in the operating room." In addition, "LPNs and surgical technologists may assist

in circulatory duties under the supervision of a qualified nurse who is immediately available to respond to emergencies." The interpretive guidelines, as stated in the State Operations Manual issued by the Centers for Medicare and Medicaid Services, DHHS, interpret these provisions to mean the circulating nurse must be an RN. An LPN or surgical technologist may assist an RN carrying out circulatory duties, but he or she must be under the supervision of the circulating RN who is in the OR and who is available to immediately and physically respond/intervene to provide necessary interventions in emergencies. The supervising RN would not be considered immediately available if he or she was located outside the OR or engaged in other activities/duties which prevent the RN from immediately intervening and assuming whatever circulating activities/duties that were being provided by the LPN or surgical technologist.)

Permitted actions

The facilities could assign a qualified RN to be present in the OR for the duration of each surgical procedure, though the RN who was performing the duties of a circulating nurse would not be prevented by the bill from leaving the OR as part of the surgical procedure, leaving the OR for short periods, or, under employee rules or regulations, being relieved during the surgical procedure by another qualified RN who was assigned to assume the circulating duties for that surgical procedure.

"Registered professional nurse" is defined in Section 17201 of the code to mean "an individual licensed under this article to engage in the practice of nursing which scope of practice includes the teaching, direction, and supervision of less skilled personnel in the performance of delegated nursing activities."

FISCAL IMPACT:

SB 605, as passed by the Senate, will have no fiscal impact on the state or local government.

BACKGROUND AND DISCUSSION:

The duties of a circulator include meeting with a patient prior to surgery and coordinating the nursing care and safety needs of a surgical patient. The circulator must know the patient's medical history; facilitate communication between the patient, the patient's family, and the surgical team; advocate for the patient while the patient is under anesthesia; and stay with the patient before, during, and after the surgical procedure. Under federal regulations and interpretative guidelines, which apply to hospitals and surgical facilities providing services to Medicare and Medicaid beneficiaries, the minimum standards regarding education and training necessary to function as a circulator require a circulating nurse to be an RN. An LPN or surgical technologist can carry out circulatory duties only if an RN circulator is present in the operating room at all times to provide direct supervision and be available to step in should the need arise.

Though most, if not all, hospitals and surgical facilities in Michigan voluntarily comply with these federal regulations (even if they do not serve the Medicare or Medicaid

population), some in the health professions believe that state law should be amended so to ensure that all patients have an RN circulator present when undergoing surgery. Apparently, there is a concern that to save money, a hospital or facility may have an RN circulator "circulating" among multiple surgical suites to supervise LPNs or surgical technologists performing duties of a circulator. Some see this as an unsafe practice, as an emergency or critical need in one OR requiring the intervention of the RN circulator would mean he or she would not be available should an emergency or critical need arise in one of the other ORs. Thus, the bill, by referencing the federal regulations and interpretive guidelines, would establish minimum qualifications for a person performing circulating duties, ensure that each operating room be staffed by an RN circulator, and ensure that an RN circulator supervising an LPN or surgical technologist performing circulating duties would not be assigned to supervise multiple ORs simultaneously. Therefore, the bill is seen as a patient safety issue and, since most or all hospitals and facilities already employ RNs as circulators, is not expected to have cost implications for those institutions.

The bill is seen as unnecessary by some since general compliance with the conditions of participation in the Medicare and Medicaid programs is already standard practice among all 143 community hospitals in the state.

POSITIONS:

Representatives of the Association of periOperative Registered Nurses testified in support of the bill. (3-23-10)

The Michigan State Assembly – Association of Surgical Technicians indicated support for the bill. (3-23-10)

The Michigan Nurses Association indicated support for the bill. (3-23-10)

The Department of Community Health indicated support for the bill. (3-23-10)

The Michigan Health & Hospital Association is neutral on the bill; though the MHA supports the use of circulating nurses in the operating room, the Association asserts that imposing a mandate to do so is unnecessary as all state community hospitals already follow that practice. (3-23-10)

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.