

## Authorised Version

# Safe Patient Care (Nurse to Patient and Midwife to Patient Ratios) Regulations 2015

S.R. No. 169/2015

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## **Authorised Version**

STATUTORY RULES 2015

S.R. No. 169/2015

*Safe Patient Care (Nurse to Patient and Midwife to Patient Ratios) Act 2015*

### **Safe Patient Care (Nurse to Patient and Midwife to Patient Ratios) Regulations 2015**

The Governor in Council makes the following Regulations:

Dated: 22 December 2015

Responsible Minister:

JILL HENNESSY  
Minister for Health

ANDREW ROBINSON  
Clerk of the Executive Council

## **Part 1—Preliminary**

### **1 Objective**

The objective of these Regulations is to make further provision for safe patient care in hospitals by—

- (a) specifying criteria in accordance with which the number of nurses with whom an operating theatre is staffed may be reduced or increased; and
- (b) setting out matters to be considered in any proposal to vary a ratio; and

- (c) prescribing—
  - (i) principles in accordance with which nursing or midwifery hours may be redistributed or increased; and
  - (ii) requirements with which a below ratios distribution must comply; and
- (d) setting out procedures in accordance with which—
  - (i) a trial of an alternative established staffing model may be agreed and implemented; and
  - (ii) an agreement to vary a ratio or the application of a rounding method under section 12 of the **Safe Patient Care (Nurse to Patient and Midwife to Patient Ratios) Act 2015** may be made; and
  - (iii) a local dispute must be resolved; and
- (e) prescribing other matters to give effect to the **Safe Patient Care (Nurse to Patient and Midwife to Patient Ratios) Act 2015**.

## **2 Authorising provision**

These Regulations are made under section 45 of the **Safe Patient Care (Nurse to Patient and Midwife to Patient Ratios) Act 2015**.

## **3 Commencement**

These Regulations come into operation on 23 December 2015.

## **4 Definition**

In these Regulations—

*the Act* means the **Safe Patient Care (Nurse to Patient and Midwife to Patient Ratios) Act 2015**.

## **Part 2—Nurse to patient and midwife to patient ratios**

### **5 Criteria for reducing or increasing number of nurses staffing an operating theatre**

For the purposes of section 25(2) of the Act, the following criteria are prescribed—

- (a) the complexity of the surgical procedure;
- (b) the pre-existing condition of the patient;
- (c) the number of operations on the list for the operating theatre;
- (d) the experience and skill mix of staff;
- (e) the type of equipment used;
- (f) the number of students requiring supervision;
- (g) the layout of the operating theatre and the number of operating theatres in the suite;
- (h) temporary fluctuations in demand across the whole theatre suite during an operating theatre session.

### **6 Considerations applicable to a proposal to vary a ratio**

For the purposes of section 32(b) of the Act, the following considerations, so far as relevant to the proposal, are prescribed—

- (a) the profile of patients in the ward as to age, expected length of stay, complexity of treatment and case mix and throughput of patients in the clinical setting;
- (b) the capacity of the nurses or midwives with whom the ward is staffed to complete their duties within the existing rostered number of nursing or midwifery hours;

- (c) clinical risks to the quality of patient care, including risks of falls, medication errors, sepsis, thrombosis, pressure ulcers, pneumonia and urinary tract infections;
- (d) the occupational health and safety of the nurses or midwives with whom the ward is staffed, including the physical environment of the ward;
- (e) the staff engagement of the nurses or midwives with whom the ward is staffed.

## **7 Redistribution of nursing or midwifery hours**

- (1) For the purposes of section 33(1) of the Act, the redistribution principles are the following—
  - (a) the number of direct patient care nursing or midwifery hours generated by the ratios over a 28 day period is the minimum number of nursing or midwifery hours that may be redistributed within the ward for that period;
  - (b) subject to any ratio that provides for a lesser staffing requirement, on any shift in a ward other than an antenatal or postnatal ward or a delivery suite there must be at least 2 nurses (one of whom is a registered nurse);
  - (c) a redistribution proposal must be consistent with the requirement as to skill mix set out in section 14 of the Act;
  - (d) a redistribution proposal must be based on a genuine and reasonable belief of the operator that under it—
    - (i) the workload of the nurses or midwives in the ward would be maintained or improved; and
    - (ii) the delivery of quality patient care would be maintained or improved;

- (e) a redistribution proposal must not be implemented unless—
  - (i) the proposal addresses its impact on the quality of patient care and, if relevant, addresses the other considerations specified in regulation 6; and
  - (ii) in the case of a proposal made by the operator of the hospital, a copy of the proposal has been given in writing to all nurses and midwives affected by it; and
  - (iii) in the case of a proposal made by a nurse or midwife, a copy of the proposal has been given in writing to the operator of the hospital and to all nurses and midwives affected by it; and
  - (iv) consultation with respect to it has been undertaken in good faith between the operator and the affected parties over a period of 2 weeks.
- (2) The reference in subregulation (1)(a) to direct patient care nursing or midwifery hours is a reference to hours used to provide direct care to patients and does not include any of the following—
  - (a) supernumerary in-charge hours;
  - (b) nurse or midwife educator hours;
  - (c) clinical nurse consultant hours;
  - (d) nurse practitioner hours that do not require the provision of direct patient care as part of the role;
  - (e) leave hours (whether planned or unplanned).

## **8 Below ratios distribution**

For the purposes of section 34(2) of the Act, the following are the prescribed requirements—

- (a) the proposal under section 34(1) of the Act addresses its impact on the quality of patient care and, if relevant, addresses the other considerations specified in regulation 6;
- (b) a copy of the proposal is given in writing to all nurses and midwives affected by it and, at the same time, to any relevant union;
- (c) consultation with respect to the proposal is undertaken in good faith with the affected nurses and midwives and relevant unions over a period of 28 days;
- (d) the proposal is not implemented before the beginning of the next roster period after the end of the good faith consultation period.

## **9 Alternative staffing model**

(1) For the purposes of section 35(2)(b) of the Act, the following procedures are prescribed—

- (a) the operator of the hospital prepares a written proposal for a trial under section 35(1) of the Act that—
  - (i) addresses its impact on the quality of patient care and, if relevant, addresses the other considerations specified in regulation 6; and
  - (ii) complies with subregulation (2); and
  - (iii) is consistent with the requirement as to skill mix set out in section 14 of the Act; and
  - (iv) includes a summary of the proposed alternative staffing model; and

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- (v) states the name of at least one hospital in another State that uses a nursing hours per patient day model that is the same as, or similar to, the proposed alternative established staffing model and the period for which that hospital has used it;
  - (b) a copy of the proposal is given in writing to all nurses and midwives affected by it;
  - (c) the operator consults in good faith on the proposal over a period of 28 days with all affected nurses and midwives or any relevant union including on the following—
    - (i) the duration of the trial;
    - (ii) the scope of application of the trial;
    - (iii) the assessment methodology for the trial;
    - (iv) the benchmarks and performance criteria for the review of the trial specified in subregulation (2)(b);
  - (d) a report on the review of the trial is given to those consulted, or entitled to be consulted, under paragraph (c)—
    - (i) as soon as practicable after it is prepared; and
    - (ii) before any decision is made to extend the duration of the trial.
- (2) The proposal must—
- (a) state when the trial is to be implemented, which must not be before the beginning of the next roster period after the end of the good faith consultation required by subregulation (1)(c); and



- (b) provide for a review of the trial to be completed within 12 months after the trial is implemented that—
  - (i) includes a report on its impact on the quality of patient care; and
  - (ii) if relevant, addresses the other considerations specified in regulation 6; and
- (c) provide that the duration of the trial may only be extended by agreement between the operator of the hospital and the nurses, midwives or relevant union referred to in subregulation (1)(c); and
- (d) provide that any implementation of the model beyond the trial period is to be subject to the benchmarks and performance criteria referred to in subregulation (1)(c)(iv) being met or exceeded.

## **10 Local agreements**

- (1) For the purposes of section 36(2) of the Act, the following procedures are prescribed—
  - (a) the operator of the hospital, or a relevant union, prepares a written proposal that—
    - (i) complies with subregulation (2); and
    - (ii) sets out the nature of the proposed variation; and
    - (iii) sets out the period for which it is proposed that the variation will operate; and
    - (iv) sets out the scope of application of the variation; and

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- (v) sets out the benchmarks and performance criteria underlying the proposal, including its impact on the quality of patient care and, if relevant, addresses the other considerations specified in regulation 6;
  - (b) the operator and the union negotiate in good faith in relation to the proposal;
  - (c) if the operator and the union agree to the proposal, the agreement is evidenced by an exchange of letters between them.
- (2) The proposal must—
- (a) state when the variation is to be implemented, which must not be before the beginning of the next roster period after the exchange of letters referred to in subregulation (1)(c); and
  - (b) provide for how the agreement may be varied or terminated.

## Part 3—Enforcement

### 11 Local dispute resolution

- (1) For the purposes of section 41(2) of the Act, the following resolution procedures are prescribed—
  - (a) the nurse or midwife (*the aggrieved employee*) or the aggrieved employee's representative notifies in writing the operator of the hospital (through the aggrieved employee's immediate supervisor) of an alleged breach of the ratio or ratio variation;
  - (b) without prejudice to the outcome of the local dispute, the operator, as soon as practicable after the notification referred to in paragraph (a), must suspend the course of conduct alleged to constitute a breach of the ratio or ratio variation for the duration of the resolution procedures set out in this regulation;
  - (c) the operator must arrange a meeting to discuss the local dispute between—
    - (i) the aggrieved employee or representative; and
    - (ii) the immediate supervisor or a representative of the operator other than the immediate supervisor;
  - (d) if the local dispute is not resolved at the meeting referred to in paragraph (c), the operator, on the operator's own initiative or at the request of the aggrieved employee or representative made within 48 hours after the end of that meeting, must arrange another meeting between the aggrieved employee or representative and a representative of the operator.

- (2) A meeting referred to in subregulation (1)(c) must be held—
  - (a) within 48 hours after the notification referred to in subregulation (1)(a); or
  - (b) as otherwise agreed by, or on behalf of, the operator and the aggrieved employee.
- (3) A meeting referred to in subregulation (1)(d) must be held—
  - (a) within 48 hours after the requirement to arrange the meeting arises; or
  - (b) as otherwise agreed by, or on behalf of, the operator and the aggrieved employee.
- (4) All parties to a resolution procedure conducted under this regulation for settling a local dispute must—
  - (a) genuinely attempt to resolve the dispute in a timely manner through the procedure; and
  - (b) for that purpose act cooperatively and genuinely consider resolution options.

## **12 Failure to resolve a dispute and referral to Magistrates' Court**

For the avoidance of doubt, a party is not prevented from exercising a right to apply to the Magistrates' Court under section 42(1) of the Act if the inability to resolve a local dispute arises from the failure of a party to comply with the resolution procedures set out in regulation 11.

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