

SUBJECT: Nurse peer review of refusal to violate duty to patients

COMMITTEE: Public Health— favorable, without amendment

VOTE: 5 ayes — Berlanga, Hirschi, Davila, Janek, Maxey

0 nays

3 absent — Coleman, Delisi, Glaze

SENATE VOTE: On final passage, May 5 — 30-0

WITNESSES: *(On the House companion, HB 1433)*

For — Virginia H. Bretado, R.N.; Vicky Linsalata, R.N.; Mary Lou McLain, R.N., Texas United RNs; James Willmann, Texas Nurses Association; Stephanie Tabone, R.N.; Alan Hardy, American Association of Retired Persons

Against — Valerie Kiper, Texas Organization of Nurse Executives, Texas Hospital Association

On — None

BACKGROUND : VACS Arts. 4525a and 4525b authorize the establishment of nursing peer review committees for registered nurses (RNs) and licensed vocational nurses (LVNs) to confidentially review and evaluate nursing services, nurse qualifications, the quality of patient care rendered by nurses, and complaints against nurses or nursing services. Hospitals and other facilities that employ 10 or more RNs must have a written plan that includes peer review for identifying and reporting to the Board of Nurse Examiners RNs who expose or are likely to expose patients to harm or who fail to engage in professional conduct.

Art. 4525d prohibits suspending, terminating or otherwise disciplining RNs who refuse to engage in a patient care act or omission if the nurse provides notice at the time of refusal that the act or omission would constitute grounds for reporting the nurse to the Board of Nurse Examiners (BNE) for a violation and that allegation is upheld by a nursing peer review committee.

A nurse may be terminated or disciplined if a nursing peer review committee finds that the act or omission the nurse refused to perform was not reportable conduct to the BNE.

**DIGEST:**

SB 1081 would apply the art. 4525d provisions concerning RN refusal to act to an RN's perceived duty to a patient. "Duty to a patient" would be defined as conduct, including administrative decisions, required by standards of practice or professional conduct adopted by the BNE.

Registered nurses employed by someone who regularly employs at least 10 RNs could request a finding by a peer review committee of whether requested conduct of the nurse would violate a nurse's duty to a patient. The nurse would have to make the request in good faith, on a form produced by the BNE. The nurse could engage in the requested conduct pending the peer review committee evaluation, but could not be disciplined by the BNE for engaging in that conduct during peer review, and could not be disciplined or discriminated against by the employer for making the request.

The findings of the committee would have to be considered in a decision to discipline the nurse, but those findings would not be binding if a nurse administrator believed that the peer review committee incorrectly determined the registered nurse's duty.

If the conduct involved the medical reasonableness of a physician's order, the medical staff or medical director would have to be requested to make a determination about the medical reasonableness of the order.

The board of health would have to adopt rules regarding hospital compliance with nursing peer review laws and the rules of the BNE relating to peer review.

The bill would take effect September 1, 1997.

**SUPPORTERS  
SAY:**

SB 1081 would give nurses protection from performing acts they consider to be unsafe to patients or that would violate their duty to the patient. With the current cost-cutting emphasis in the health care delivery system, RNs can find themselves being requested to handle patient workloads or duties that would not allow them to deliver adequate and appropriate nursing care.

Current law protects nurses from terminations or disciplinary actions if the conduct is specifically prohibited under the Nursing Practice Act. However, it provides no option to RNs who believe they are being asked to engage in conduct that violates their professional code of ethics and duty to the patient. For example, institutional nurses have been assigned more patients than what they felt was safe for patient care and given supervisory responsibilities in nursing areas outside their expertise. Nurses who protest in the name of patient care are often called “troublemakers” and risk losing their jobs without peer review or other protections.

Peer review is a method used successfully by nurses, physicians and other health care professionals to confidentially review, evaluate and make recommendations on practice trends, complaints and services, which often can be sensitive issues subject to disagreement among reasonable and respected professionals.

Peer review requests would not be abused because nurses are aware of the nature and limitations of peer review and that they must make their request in good faith and because peer review determinations do not bind employers to specific courses of action. A nursing peer review committee determination in favor of a nurse would not prevent the nurse from being disciplined if the administrator disagreed with the determination.

SB 1081 would limit the peer review requirement to employers who employ 10 or more RNs, because they are currently required to provide peer review for their nurses and employ about 75 percent of all active RNs. Also, about 10 nurses are needed in a facility to form a peer review committee that would also appropriately grant confidentiality to discussions of nurse performance, and smaller health care businesses would have to incur additional costs in using outside nursing peer review committees if they were included.

**OPPONENTS  
SAY:**

Peer review protection under the circumstances outlined in SB 1081 could be abused by nurses who inappropriately or excessively insisted on peer review for minor or temporary as well as major changes in nursing responsibilities based on contentions that the requested conduct would violate a duty to patient care.

OTHER  
OPPONENTS  
SAY:

Similar protections should be extended to LVNs and to nurses working in facilities or offices that normally employ fewer than 10 RNs. In nursing homes, for example, resident neglect and abuse is often blamed on short staffing, and nurses are caught between employer-imposed limitations and personal and professional standards to provide adequate resident care even though staffing is insufficient to meet resident needs.