



POSITION STATEMENT

Position Statement on COVID-19 Liability Protection Rollback

The intent of this position statement is to assert that since hospital, nursing home, and care giver immunity provisions for the care of patients with COVID-19 have been repealed as of April 6, 2021, and since the usual and customary standard of care for patients has now been restored, hospitals and nursing homes must reinstate all pre-pandemic and contractual standards of orientation, staff development training, floating, and RN competency assessment level criterion and practices that are required to care for all patients, including COVID-19 patients.

POSITION

The following concepts constitute The New York State Nurses Association's position on this issue:

- Legal and ethical standards of practice for nurses govern the nurse's practice at every level of practice;
- Professional standards guarantee that nurses are accountable for our clinical decisions and actions, and for maintaining competence during our career;
- Professional standards communicate to the general public the standards that can be expected of nurses;
- Professional standards describe the competent level of care in each phase of the nursing process; they reflect a desired and achievable level of performance against which a nurse's actual performance can be compared and measured;
- Nurses' unions contractual provisions are a bridge between mandatory legal and ethical professional standards and those standards of nursing that have been identified as: (1) areas of practice where the employer must affirmatively resource nurses in order for nurses to be able to comply with mandatory legal and ethical standards; (2) areas for improvements in our clinical practice and work environments, (3) areas for improvements in patient and workplace safety, and (4) areas of practice where the current work environment does not meet established professional standards to maintain the trust and respect of our patients and the community;
- Hospital and nursing home employers must reinstate all pre-pandemic legal and ethical standards of practice.
- Healthy and safe working conditions must be restored and contractual provisions, including orientations, must be reestablished. Staff development training must comply with the usual timelines, unsafe floating out of clinical clusters must stop, and fair and clinically-sound RN competency assessments must be reinstated.

BACKGROUND

Statutory, regulatory, and contractual standards of practice and requirements are critical elements that affect the practice of nurses in this dynamic healthcare climate. Professional standards guarantee that nurses are accountable for our clinical decisions and actions, and for maintaining competence during our career. Nursing standards of practice promote the best possible outcome, and minimize exposure to risk of harm. Professional

standards encourage us to persistently enhance our knowledge base through experience, continuing education, and the latest guidelines (Davis, 2014).

In response to the COVID-19 emergency disaster, Governor Cuomo had issued a number of Executive Orders (EOs) that impacted Hospitals, Nursing Homes, Nurse Practitioners and Registered Professional Nurses. Those EOs, in part, changed the usual and customary standards of practice by providing immunity to hospitals, nursing homes, and practitioners, and allowing these entities to practice without fear of incurring civil liability for any alleged injury or death as a direct result of a commission (doing something a reasonably prudent provider would not do under the circumstances) or omission (not doing something a reasonably prudent provider would do under the circumstances) in practice.

On April 6, 2021, the New York State Legislature signed into law a bill *repealing*¹ the hospital, nursing home, and caregiver immunity provisions and protections for the care of patients with COVID-19. The impact of the new law on RNs is that going forward, and as of April 6, 2021, the pre-pandemic (usual and customary) nursing standards of care will apply to all patients, regardless if they have COVID-19. There are no longer any exceptions to, or immunities for, the standard of care for COVID-19 patients. This new law only applies going forward and should not impact any potential practitioner or facility liability for past care given to patients during the COVID-19 pandemic.

RECOMMENDATIONS

- Hospitals and nursing homes are accountable to the public they serve and are responsible for providing: (1) adequate staff to meet the immediate needs of every patient; (2) orientation and staff development to ensure the competencies of each licensed professional employee; (3) a healthy and safe working environment; (4) facilitating the usual and customary industry and professional standards of practice by updating internal policies and procedures; (5) adequate equipment and material resources to comply with legal and ethical standards of patient care and professional practice; (6) appropriate staffing of units a mix of staff who are competent to meet the needs of every patient on that unit; and (7) a culture of safety whereby every licensed practitioner can express concerns about the work environment.
- Hospital and nursing home employers must reinstate all pre-pandemic legal and ethical standards of practice.
- Healthy and safe working conditions must be restored and contractual provisions, including orientations, must be reestablished. Staff development training must comply with the usual timelines, unsafe floating out of clinical clusters must stop, and fair and clinically-sound RN competency assessments must be reinstated.

¹ §§3080 – 3082 of Article 30-d of the Public Health Law Relating to the Emergency or Disaster Treatment Protection Act was originally promulgated to promote the public health, safety and welfare of all citizens by broadly protecting the healthcare facilities and healthcare professionals in New York State from liability that may result from treatment of individuals with COVID-19 under conditions resulting from circumstances associated with the public health emergency. However, Article 30-D may have provided nursing homes with financial incentives to put residents at risk of harm by refraining from investing public funds to obtain sufficient staffing to meet residents' care needs, to purchase sufficient PPE for staff, and to provide effective training to staff to comply with infection control protocols during pandemics and other public health emergencies. This law now repeals the protections granted to nursing homes, hospitals, and other healthcare facilities, as recommended by New York State Attorney General Letitia James.

References:

Davis, C. (September/October, 2014). The importance of professional standards. *Nursing Made*

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