

RECOMMENDED FINAL REGULATION

*As advanced by the Quality Improvement and Patient Protection Committee on
May 20, 2015*

*For consideration by the Health Policy Commission Board on
June 10, 2015*

958 CMR 8.00: PATIENT ASSIGNMENT LIMITS FOR REGISTERED NURSES ~~TO PATIENT RATIO~~ IN INTENSIVE CARE UNITS IN ACUTE HOSPITALS

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8.01: General Provisions

Scope and Purpose: 958 CMR 8.00 governs the implementation of M.G.L. c. 111, §231, which establishes Patient Assignment limits for a Registered Nurses ~~to patient ratio of one to one or one to two~~ in Intensive Care Units in Acute Hospitals licensed by the Massachusetts Department of Public Health and in hospitals operated by the Commonwealth of Massachusetts, including the process for selecting or developing the Acuity Tool and required elements of the Acuity Tool.

8.02: Definitions

As used in 958 CMR 8.00 the following words mean:

Acute Hospital. The teaching hospital of the University of Massachusetts Medical School, any hospital licensed by the Department of Public Health pursuant to M.G.L. c. 111, § 51 or hospital operated by the Commonwealth, and which contains a majority of medical-surgical, pediatric, obstetric, and maternity beds as defined by the Department.

Acuity Tool. A decision support tool using a method for assessing patient stability for the ICU Patient according to a defined set of indicators (including Clinical Indicators of Patient Stability and Indicators of Staff Nurse Workload), and used in the determination of a Patient Assignment.

Clinical Indicators of Patient Stability. Indicators of ICU Patient stability related to the physiological status and clinical complexity and related scheduled procedures, medications and therapeutic supports appropriate to the ICU Patient population in the ICU in which the Acuity Tool will be deployed.

Commission. The Health Policy Commission established in M.G.L. c. 6D.

Critical Environmental Factors. Factors relevant to the particular ICU in which the Acuity Tool will be deployed that may affect the ability of Staff Nurses to care for one or two ICU Patients, such as: physical environment of the ICU, including visibility of patient/monitoring equipment; nursing skill mix, competency and familiarity with the ICU; availability of patient care equipment and technology; and availability of medical, ancillary and support staff in the ICU (e.g., physician, pharmacist, IV team/respiratory therapist, nurse practitioner, clinical nurse specialist, physician assistant, unit secretary, sitters, aides/technicians, staff to operate patient care equipment and technology, patient transport services, travel team/coverage).;

Department. The Massachusetts Department of Public Health established in M.G.L. c. ~~44~~17, § 1.

Indicators of Staff Nurse Workload. Indicators of Staff Nurse workload associated with caring for the ICU Patient appropriate to the ICU Patient population in the ICU in which the Acuity Tool will be deployed, such as: patient age, including gestational age as applicable, and cognitive/functional ability; patient and family communication skills and cultural/linguistic characteristics; need for patient and family education; family and other support for the patient; need for care coordination; transitional care and discharge planning required for the patient.

Intensive Care Unit (“ICU”). A unit physically and identifiably separate from general routine and other patient care areas, in which are concentrated special equipment and skilled personnel for the care of critically ill inpatients requiring ~~the~~ immediate and concentrated continuous care and observation, and which meets the Medicare requirements in 42 CFR 413.53(d) for intensive care type inpatient hospital units, ~~and~~ licensed by the Department, ~~;~~ and shall include ing intensive care unit, coronary care unit, burn unit, pediatric intensive ~~–~~care unit and neonatal intensive care

unit, as defined in 105 CMR 130.020, however named by the Acute Hospital, and any such ~~unit~~ ~~ICU service or beds~~ in a hospital operated by the Commonwealth.

ICU Patient. A patient occupying a bed in an ICU.

Nurse Manager. A nurse with management responsibility for nursing services for the ICU.

Patient Assignment. The assignment of ~~a~~ Staff Nurse to care for ~~one or two~~ specified ICU Patient(s) ~~for a Shift~~, consistent with the education, experience and demonstrated competence of the Staff Nurse, the needs of the ICU Patient(s), and the requirements of ~~—~~958 CMR 8.00.

Registered Nurse. A nurse who meets the criteria for licensure under M.G.L. c. 112, § 74 and 244 CMR 8.00, and who holds a valid license from the Massachusetts Board of Registration in Nursing to engage in the practice of nursing in Massachusetts as a ~~-~~Registered Nurse.

Staff Nurse. A Registered Nurse providing direct patient care in an ICU ~~who is not a Nurse Manager~~.

Shift. A designated period of work time within the ICU.

8.03: Applicability

958 CMR 8.00 applies to Acute Hospitals licensed by the Department to provide ~~ICU~~ service(s) in ICUs, as defined in 958 CMR 8.02 ~~or with licensed ICU beds~~, and to hospitals operated by the Commonwealth and authorized to provide ICU service(s) ~~or with ICU beds~~.

8.04: Staff Nurse Patient Assignment in Intensive Care Units

- (1) ~~In~~ all ICUs, the Patient Assignment for each Staff Nurse shall be one or two ICU Patients depending on the stability of the ICU Patient as assessed pursuant to 958 CMR 8.05 at all times during a Shift.
- (2) The maximum Patient Assignment for each Staff Nurse may not exceed two ICU Patients at any time during a Shift.
- (3) ~~Nothing~~ in 958 CMR 8.00 prohibits the ~~a~~ Patient Aassignment of more than one Staff Nurse for to an ICU Patient.

8.05: Assessment of Patient Stability ~~and Determination of Patient Assignment~~

(1) For purposes of implementing 958 CMR 8.04, ~~determining a Patient Assignment~~, the Staff Nurse ~~assigned to care for~~assessing the ICU Patient shall assess the stability of the ICU Patient utilizing:

(a) The exercise of sound nursing assessment and judgment within the parameters of the Staff Nurse's continuing education and experience; and

~~(ba)~~ The Acuity Tool developed or selected by the Acute Hospital and certified by the Department, pursuant to 958 CMR 8.00; ~~and~~

~~(b) The exercise of sound nursing assessment and judgment within the parameters of the Staff Nurse's continuing education and experience.~~

(2) If the Staff Nurse ~~assigned to care for~~assessing the ICU Patient determines within the exercise and scope of sound nursing assessment and judgment within the parameters of the Staff Nurse's continuing education and experience that the ICU Patient's stability requires a different ~~Registered-Staff~~ Nurse-to-patient ratio than that indicated by the Acuity Tool, the Nurse Manager or the Nurse Manager's designee shall resolve the disagreement between the Acuity Tool and the Staff Nurse's assessment, in consultation as appropriate with the other Staff Nurses ~~on the unit in the ICU~~ and taking into account nursing skill mix and patient census in the ICU and other Critical Environmental ~~F~~factors such as nursing skill mix and patient census on the unit, and shall determine the appropriate Patient Assignment.

(3) The Staff Nurse ~~assigned to care for~~assessing the ICU Patient shall assess the stability of the ICU Patient using the Acuity Tool at a minimum:

(a) Upon the ICU Patient's admission or transfer to the ICU;

(b) Once during a Shift; and

(c) At other intervals or circumstances as specified in the Acute Hospital's policies and procedures established pursuant to 958 CMR 8.07(6)(3)(a).

(4) Nothing in this section shall limit the application of relevant state or federal law to Registered Nurses, including M.G.L. c. 112, § 80B, 244 CMR 3.00, and 244 CMR 9.00.

8.06: Development or Selection and Implementation of the Acuity Tool

(1) Each Acute Hospital shall develop or select an Acuity Tool for each ICU that meets the requirements of 958 CMR 8.00, in order to:

- (a) Support the determination of whether each ICU Patient requires care by one or more ~~Registered-Staff~~ Nurses, or by a ~~Registered-Staff~~ Nurse assigned to care for no more than two ICU Patients; and
 - (b) Address the unique care needs and circumstances of the patient population in and physical environment of each ICU at the Acute Hospital.
- (2) Each Acute Hospital shall ~~establish develop, implement~~ and document the process for development or selection ~~and implementation~~ of the Acuity Tool to be deployed in each ICU, which shall include but not be limited to the following required elements:
- (a) Formation of an advisory committee to make recommendations to the Acute Hospital on the development or selection and ~~implementation~~ use of the Acuity Tool to be deployed in each ICU, which committee shall be composed of at least 50 percent ~~Registered Nurses who are not Nurse Managers, a majority of whom are Staff Nurses in the ICU in which the Acuity Tool will be deployed who are not Nurse Managers, together with~~ and other members selected by the ~~Acute H~~ospital including but not limited to representatives of nursing management, and other appropriate ancillary and medical staff;
 - (b) A process for the advisory committee to ~~address and~~ make recommendations on the required elements of the Acuity Tool as set forth in 958 CMR 8.07 and other considerations for ~~its the implementation~~ use of the Acuity Tool including but not limited to the following:
 1. The defined set of indicators to be assessed by the Acuity Tool, including Clinical Indicators of Patient Stability and other Indicators of Staff Nurse Workload ~~as set forth in 8.07(4)~~;
 2. A method for scoring the defined set of Scores to be assigned to each indicators and;
 3. ~~H~~ow scores are tabulated and used in the determination of whether each ICU Patient requires care by one or more Staff Nurses, or by a Staff Nurse assigned to care for no more than two ICU Patients; -and
 4. Critical Environmental Factors, ~~relevant to the particular ICU and that may affect the ability of Staff Nurses to care for one or two ICU Patients that should be addressed in the selection or development of the Acuity Tool, such as:~~
 - (i) ~~Physical environment of the unit, including visibility of patient/monitoring equipment;~~

- ~~(ii) Nursing skill mix, competency and familiarity with the ICU;~~
 - ~~(iii) Availability of patient care equipment and technology; and~~
 - ~~(iv) Availability of ancillary and support staff in the ICU (e.g., pharmacist, IV team/respiratory therapist, nurse practitioner, clinical nurse specialist, physician assistant, unit secretary, sitters, aides/technicians, staff to operate patient care equipment and technology, patient transport services, travel team/coverage);~~
 - (c) A process for Staff Nurses ~~and Nurse Managers~~ to participate in the testing of, validation of and recommendations for any revision to the Acuity Tool prior to implementation; and
 - (d) A process for the Acute Hospital to address and respond to recommendations of the advisory committee regarding the selection; or development ~~or~~ and revision use of the Acuity Tool pursuant to 958 CMR 8.06.;
- (3) Each Acute Hospital shall develop written policies and procedures for implementation of the Acuity Tool to be deployed in each ICU, which shall include but not be limited to the following required elements:
- ~~(a) Development and implementation of policies and procedures for~~ Aassessment of patient stability and how the resulting Acuity Tool score will be used to support the determination of the appropriate Patient Assignment in the any ICU in the Acute Hospital, consistent with the requirements of 958 CMR 8.00; and
 - ~~(b) A process for P~~periodic review and evaluation of the implementation of the Acuity Tool.
- (4) Within the requirements of 958 CMR 8.06, nothing shall prevent an Acute Hospital with multiple ICUs from seeking administrative efficiency in the development or selection of Acuity Tools by, for example, duplicating non-Staff Nurse members selected by the Acute Hospital pursuant to 958 CMR 8.06(2)(a) on advisory committees or considering a common format or platform for Acuity Tools used in the Acute Hospital.
- ~~(43) Nothing in 958 CMR 8.06 shall restrict or limit any additional obligation of an Acute Hospital to bargain with a labor organization under applicable law, regulation or collective bargaining agreement.~~

8.07: Required Elements of the Acuity Tool

Each Acute Hospital shall develop or select an Acuity Tool that meets the following minimum requirements:

- (1) The Acuity Tool shall be in writing either in electronic or hardcopy format;
- (2) The Acuity Tool shall be tailored to the unique care needs and circumstances of the patient population in ~~any~~the ICU in which the Acuity Tool is deployed;
- (3) The Acuity Tool shall include a method for scoring a defined set of indicators, which shall include Clinical Indicators of Patient Stability and other ~~I~~ndicators of Staff Nurse Workload ~~as required in 8.07 (4)(a) and (b)~~; and

~~(4) The Acuity Tool shall include a defined set of indicators incorporating:~~

~~(a) Clinical Indicators of Patient Stability related to physiological status and clinical complexity and related scheduled procedures, medications and therapeutic supports appropriate to the ICU Patient population in the ICU in which the Acuity Tool will be deployed in clinical domains such as:~~

- ~~1. Respiratory;~~
- ~~2. Cardiac;~~
- ~~3. Surgical;~~
- ~~4. Neurological;~~
- ~~5. Gastrointestinal;~~
- ~~6. Skin;~~
- ~~7. Orthopedic;~~
- ~~8. Reproductive;~~
- ~~9. Hematologic;~~
- ~~10. Renal;~~
- ~~11. Metabolic/endocrine;~~
- ~~12. Immune; and~~

~~(b) Other indicators of Staff Nurse workload associated with caring for the ICU Patient appropriate to the ICU Patient population in the ICU in which the Acuity Tool will be deployed such as:~~

- ~~1. Patient age, including gestational age as applicable, and cognitive/functional ability;~~
- ~~2. Patient and family communication skills and cultural/linguistic characteristics;~~
- ~~3. Need for patient and family education;~~
- ~~4. Family and other support for the patient;~~
- ~~5. Need for care coordination; and~~
- ~~6. Transitional care and discharge planning required for the patient.~~

~~(54) The Acute Hospital shall develop written policies and procedures specifying how the resulting Acuity Tool score will be used to support the determination that the ICU Patient requires care by one or more Staff Nurses, or by a Staff Nurse assigned to care for no more than two ICU Patients; and~~

~~(645) Other requirements as may be specified in guidance of the Commission.~~

8.08: Records of Compliance

(1) ~~Records of~~ Development or Selection of Acuity Tool(s). Each Acute Hospital shall document, retain for a minimum period of ten ~~(10)~~ years and provide to the Department and the Commission upon request, the ~~process it follow~~ ing records related to the development or selection of the Acuity Tool required by 958 CMR 8.06(2); ~~including but not limited to:~~

(a) Membership of the advisory committee including name and title of members;

(b) Minutes from meetings of the advisory committee; and

(c) The Acute Hospital's rationale for selection or development of ~~an~~ the Acuity Tool including how the Acute Hospital addressed recommendations of the advisory committee and the decision to include or exclude certain Clinical Indicators of ICU Patient stability and other related Indicators of Staff Nurse Workload, and how Critical Environmental Factors in 958 CMR 8.06-(2)(b)(~~43~~) were taken into account in the selection and the method for scoring of the indicators.;

~~(c) Written policies and procedures regarding the implementation of the Acuity Tool required in 958 CMR 8.07(5); and~~

~~(d) The process for validating and periodically evaluating the use of the Acuity Tool in each ICU in the Acute Hospital.~~

- (2) ~~Records of Staffing Compliance.~~ Each Acute Hospital shall document and retain for a minimum period of ten ~~(10)-years~~ ~~records indicating~~ the results of the assessment of ICU Patient stability ~~for each ICU Patient and Patient Assignment as required in pursuant to 958 CMR 8.04 and 8.05 and determination of Patient Assignment for each ICU Patient.~~

8.09: Acuity Tool Certification and Enforcement by the Department of Public Health and Compliance

- ~~(1) — Each Acute Hospital shall submit the Acuity Tool for each ICU to the Department for certification prior to implementation and periodically as determined by the Department;~~
- ~~(2) — The Department shall determine whether the Acuity Tool(s) was developed or selected by the Acute Hospital in accordance with the procedures and requirements of 958 CMR 8.00; and~~
- ~~(3) — Acute Hospitals shall comply with the procedures requirements for certification of an Acuity Tool and enforcement compliance with M.G.L. c. 111, § 231 and 958 CMR 8.00, as established by the Department.~~

8.10: Public Reporting on Nurse Staffing Compliance

- (1) Each Acute Hospital shall report to the Department, ~~at least quarterly and~~ in the form and manner specified by the Department.:
- ~~(a) — R~~ports of Staff Nurse-to-patient ratios by ICU; and
- ~~(b) — Any instance and the reason in which the minimum Staff Nurse to patient ratio of one to two was not maintained by the Acute Hospital.~~
- (2) Each Acute Hospital shall ~~post the reports provided to the Department pursuant to 958 CMR 8.10(1) on the Acute Hospital's its website, quarterly or issue reports quarterly to the public on Staff Nurse to patient ratios by ICU by issuing the reports provided to the Department pursuant to 958 CMR 8.10(1) on the Acute Hospital's website, and or~~ as may be specified in guidance of the Commission.

8.11: Collection and Reporting of Quality Measures

Each Acute Hospital shall:

- (1) Report the ICU-related quality measures ~~to the Department, as~~ specified in guidance of the Commission;

- (2) Report the ~~specified~~ quality measures for each ICU to the Department, ~~at least annually,~~ and in the form and manner specified by the Department; and
- (3) ~~Issue Post the Reports to the public on the specified quality measures for each ICU, at least annually, by issuing reports provided to the Department pursuant to 958 CMR 8.11(2) on the Acute Hospital's website, and-or~~ as may be specified in guidance of the Commission.

~~8.12: Development of ICU Staffing Plan~~

~~Each Acute Hospital shall develop and implement a Registered Nurse staffing plan for the ICU in which the Acuity Tool is deployed that incorporates data gathered from implementation of the Acuity Tool.~~

~~8.132: Implementation Certification Timeline~~

Each Acute Hospital that is an academic medical center, as the term is used by the Center for Health Information and Analysis, shall comply with the requirements of the Department for submit certification of an Acuity Tool for each ICU to the Department for certification no later than ~~October~~ March 31, 2015, or as otherwise specified in the Department's requirements for certification. All other Acute Hospitals shall comply with the requirements of the Department for certification of an Acuity Tool for each ICU no later than September 30, 2016, or as otherwise specified in the Department's requirements for certification.

8.143: Severability

If any section or portion of 958 CMR 8.00 or the applicability thereof is held invalid or unconstitutional by any court of competent jurisdiction, the remainder of 958 CMR 8.00 or applicability thereof to other persons, entities, or circumstances shall not thereby be affected.

REGULATORY AUTHORITY

958 CMR 8.00: MGL c. 111, § 231.