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SENATE FILE

2126

BY BOLKCOM

Passed Senate, Date _____

Passed House, Date _____

Vote: Ayes _____ Nays _____

Vote: Ayes _____ Nays _____

Approved _____

A BILL FOR

1 An Act relating to health care delivery, including staffing
2 requirements, and providing penalties.

3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

SF 2126 HUMAN RESOURCES

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1 Section 1. NEW SECTION. 135M.1 TITLE.

2 This chapter shall be known and may be cited as the "Safe
3 Staffing for Quality Care Act".

4 Sec. 2. NEW SECTION. 135M.2 FINDINGS.

5 The general assembly finds that:

6 1. The state has a substantial interest in assuring that
7 delivery of health care services to patients in health
8 facilities is adequate and safe and that health facilities
9 retain sufficient nursing staff in order to promote optimal
10 health care outcomes.

11 2. Inadequate and poorly monitored nurse staffing
12 practices jeopardize delivery of quality health care services
13 and adversely impact the health of patients who use health
14 facilities.

15 3. Research indicates that health facility nurses work
16 substantial overtime hours and that nurses working twelve-hour
17 shifts work the most overtime hours per week.

18 4. Mandatory overtime and lengthy work hours for direct-
19 care nurses constitute a threat to the health and safety of
20 patients, adversely impact the general well-being of nurses
21 and their families, and result in greater turnover, which
22 increases long-term shortages of nursing personnel.

23 5. Inadequate health facility staffing results in
24 dangerous medical errors and patient infections.

25 6. Recent changes in the health care delivery system are
26 resulting in a higher acuity level among patients in health
27 facilities.

28 7. The basic principles of staffing in health facilities
29 should focus on patient health care needs and be based on
30 consideration of patient acuity levels and the services
31 necessary to ensure optimal health care outcomes.

32 8. A substantial number of nurses indicate that patient
33 acuity measurements are inadequate and that many health
34 facilities rarely, if ever, staff according to an acuity
35 measurement tool.

1 9. To ensure adequate protection and care for patients in
2 health facilities, it is essential that qualified licensed
3 nurses be accessible and available to meet the nursing needs
4 of patients.

5 10. Establishing staffing standards will ensure that
6 health facilities throughout the state operate in a manner
7 that guarantees the public safety and the delivery of quality
8 health care services.

9 Sec. 3. NEW SECTION. 135M.3 DEFINITIONS.

10 As used in this chapter, unless the context otherwise
11 requires:

12 1. "Acuity system" means an established measurement
13 instrument that does all of the following:

14 a. Predicts nursing care requirements for individual
15 patients based on severity of patient illness, need for
16 specialized equipment and technology, intensity of nursing
17 interventions required, and the complexity of clinical nursing
18 judgment needed to design, implement, and evaluate the
19 patient's nursing care plan.

20 b. Specifies the amount of nursing care needed, both in
21 number of nurses and in skill mix of nursing personnel
22 required, on a daily basis, for each patient in a nursing
23 department or unit.

24 c. Is stated in terms that readily can be used and
25 understood by direct-care nursing staff.

26 2. "Assessment tool" means a measurement system that
27 compares the staffing level in each nursing department or unit
28 against actual patient nursing care requirements in order to
29 review the accuracy of an acuity system.

30 3. "Critical care unit" means a unit of a hospital that is
31 established to safeguard and protect patients whose severity
32 of medical conditions requires continuous monitoring and
33 complex nursing intervention.

34 4. "Declared state of emergency" means an officially
35 designated state of emergency that has been declared by a

1 federal, state, or local government official having authority
2 to declare that the state, county, municipality, or locality
3 is in a state of emergency, but does not include a state of
4 emergency which results from a labor dispute in the health
5 care industry.

6 5. "Direct-care nurse" and "direct-care nursing staff"
7 include any nurse who has direct responsibility to oversee or
8 carry out medical regimens or nursing care for one or more
9 patients.

10 6. "Documented staffing plan" means a detailed, written
11 plan that specifies the minimum number, skill mix, and
12 classification of licensed nurses required in each nursing
13 department or unit in the health facility for a given year,
14 based on reasonable projections derived from the patient
15 census and average acuity level within each department or unit
16 during the prior year, the department or unit size and
17 geography, the nature of services provided, and any
18 foreseeable changes in department or unit size or function
19 during the year.

20 7. "Health facility" means an acute care hospital, an
21 outpatient surgical facility, or an institution operating as a
22 psychiatric hospital or operating a designated psychiatric
23 unit, regulated by the department of inspections and appeals.

24 8. "Nurse" means either a registered nurse or a licensed
25 practical nurse.

26 9. "Nursing care" means care which falls within the scope
27 of practice set forth in chapter 152 or is otherwise
28 encompassed within recognized professional standards of
29 nursing practice, including assessment, nursing diagnosis,
30 planning, intervention, evaluation, and patient advocacy.

31 10. "Off-duty" means, with reference to a health facility
32 employee, that the individual has no restrictions placed on
33 the individual and is free of all duty on behalf of the health
34 facility.

35 11. "On-duty" means, with reference to a health facility

1 employee, that the individual is required to be available and
2 ready to perform services on request within or on behalf of
3 the health facility and includes any rest periods or breaks
4 during which the individual's ability to leave the health
5 facility is restricted either expressly or by work-related
6 circumstances beyond the individual's control.

7 12. "Outpatient surgical facility" means the same as
8 defined in section 135.61.

9 13. "Skill mix" means the combination of licensing,
10 specialty, and experience levels among direct-care nurses.

11 14. "Staffing level" means the actual numerical nurse-to-
12 patient ratio by nurse classification within a nursing
13 department or unit.

14 Sec. 4. NEW SECTION. 135M.4 HEALTH FACILITY STAFFING
15 STANDARDS.

16 1. a. Each health facility shall ensure that the facility
17 is staffed in a manner that provides sufficient, appropriately
18 qualified nursing staff of each classification in each
19 department or unit within the facility, to meet the
20 individualized care needs of the patients in the facility and
21 to meet the requirements of this section.

22 b. As a condition of licensure, each health facility
23 shall, annually, submit to the department of inspections and
24 appeals a documented staffing plan accompanied by written
25 certification that the staffing plan is sufficient to provide
26 adequate and appropriate delivery of health care services to
27 patients for the subsequent year. The staffing plan shall:

28 (1) Meet the minimum requirements pursuant to subsection
29 2.

30 (2) Comply with all additional requirements established by
31 state or federal law or regulation.

32 (3) Identify and utilize an approved acuity system to
33 address fluctuations in actual patient acuity levels and
34 nursing care requirements that necessitate increased staffing
35 levels above the minimums specified in the plan.

1 (4) Factor in other unit or department activities such as
2 discharges, transfers and admissions, and administrative and
3 support tasks that are expected to be performed by direct-care
4 nurses, in addition to direct-care nursing staff activities.

5 (5) Identify the assessment tool used to validate the
6 acuity system on which the plan is based.

7 (6) Identify the system which will be used to document
8 actual staffing on a daily basis within each department or
9 unit.

10 (7) Include a written assessment of the accuracy of the
11 prior year's staffing plan compared with the prior year's
12 actual staffing needs.

13 (8) Identify each nursing staff classification referenced
14 in the plan accompanied by a statement specifying minimum
15 qualifications for each referenced classification.

16 (9) Be developed in consultation with the direct-care
17 nursing staff within each department or unit or, if the staff
18 is represented, with the applicable recognized or certified
19 collective bargaining representative of the direct-care
20 nursing staff.

21 2. a. The staffing plan shall allocate a sufficient
22 number of direct-care nurses to provide for a ratio of one
23 direct-care nurse to one patient in a pediatric recovery room,
24 in an operating room, and for special procedures; and a ratio
25 of one direct-care nurse to two patients in a burn unit and an
26 adult recovery room. The health facility, in consultation
27 with the direct-care nursing staff within each nursing
28 department or unit or, if staff is represented, with the
29 recognized or certified collective bargaining representative
30 of the direct-care nursing staff, shall establish minimum,
31 specific, numerical direct-care nurse-to-patient ratios for
32 other health facility nursing departments and units and shall
33 incorporate the ratios in the staffing plan.

34 b. The minimum number of direct-care nurse-to-patient
35 staff established in paragraph "a" shall constitute the

1 minimum number of direct-care nursing staff that shall be
2 assigned to and present within a nursing department or unit.
3 If the approved acuity system adopted by the facility
4 indicates that additional staff is required, the health
5 facility shall staff at the higher staffing level.

6 c. The department of inspections and appeals shall adopt
7 rules prescribing the method by which the department shall
8 approve a health facility's acuity system. The rules may
9 include a method for categorical approval of acuity systems.

10 d. (1) The skill mix reflected in a staffing plan shall
11 assure that all of the following elements of the nursing
12 process are performed in the planning and delivery of care for
13 each patient: assessment, nursing diagnosis, planning,
14 intervention, evaluation, and patient advocacy.

15 (2) Registered nurses shall constitute at least fifty
16 percent of the direct-care nurses included in the staffing
17 plan.

18 (3) The skill mix shall not incorporate or assume that
19 nursing care functions required by state or federal law or
20 regulation, or accepted standards of practice that are
21 required to be performed by a licensed nurse, may be performed
22 by unlicensed assistive personnel.

23 3. a. As a condition of licensure, a health facility
24 shall at all times staff in accordance with its staffing plan
25 and the staffing standards specified in the plan, provided,
26 however, that nothing in this chapter shall be deemed to
27 preclude a health facility from implementing higher direct-
28 care nurse-to-patient staffing levels.

29 b. A nurse shall not be assigned or included in the count
30 of assigned nursing staff for purposes of compliance with
31 minimum staffing requirements in a nursing department or unit
32 or a clinical area within the health facility, without
33 appropriate licensing, prior orientation, and verification
34 that the nurse is capable of providing competent nursing care
35 to patients.

1 4. a. As a condition of licensure, each health facility
2 shall maintain accurate daily records showing all of the
3 following:

4 (1) The number of patients admitted, released, and present
5 in each nursing department or unit within the facility.

6 (2) The individual acuity level of each patient present in
7 each nursing department or unit within the facility.

8 (3) The identity and duty hours of each direct-care nurse
9 in each nursing department or unit within the facility.

10 b. As a condition of licensure, each health facility shall
11 maintain daily statistics, by nursing department and unit, of
12 mortality, morbidity, infection, accident, injury, and medical
13 errors.

14 c. All records required under this subsection shall be
15 maintained for a period of seven years.

16 d. All records required under this subsection shall be
17 made available upon request to the department of inspections
18 and appeals and to the public, provided, however, that
19 information released to the public shall not contain the name
20 or other personal identifying information, apart from acuity
21 level, for any individual patient.

22 Sec. 5. NEW SECTION. 135M.5 MANDATORY OVERTIME AND
23 EXCESSIVE DUTY HOURS.

24 1. a. Notwithstanding any other provision of law to the
25 contrary and subject only to the exceptions in this section, a
26 health facility shall not directly or indirectly mandate or
27 otherwise require a health facility employee to work or be in
28 on-duty status, in excess of any of the following:

29 (1) The scheduled work shift or duty period.

30 (2) Twelve hours in a twenty-four-hour period.

31 (3) Eighty hours in a fourteen-consecutive-day period.

32 b. As used in this section, "mandatory" or "mandate" means
33 any request which, if refused or declined by the health
34 facility employee, may result in discharge, discipline, loss
35 of promotion, or other adverse employment consequence.

1 c. Nothing in this subsection is intended to prohibit a
2 health facility employee from voluntarily working overtime.

3 2. a. A health facility employee shall not work or be in
4 on-duty status in excess of sixteen hours in any twenty-four-
5 hour period.

6 b. A health facility employee working sixteen hours in any
7 twenty-four-hour period shall be given at least eight
8 consecutive hours off duty before being required to return to
9 duty.

10 c. A health facility employee shall not be required to
11 work or be on duty more than seven consecutive days without at
12 least one consecutive twenty-four-hour period off duty within
13 that time.

14 3. a. During a declared state of emergency in which a
15 health facility is requested or otherwise reasonably may be
16 expected to provide an exceptional level of emergency or other
17 medical services to the community, the mandatory overtime
18 prohibition specified in subsection 1, paragraph "a", shall
19 not apply to the following extent:

20 (1) Health facility employees may be required to work or
21 be on duty up to the maximum hours limitation specified in
22 subsection 2, paragraph "a", provided the health facility has
23 taken the steps specified in paragraph "b" of this subsection.

24 (2) Prior to requiring any health facility employee to
25 work mandatory overtime, the health facility shall make
26 reasonable efforts to fill the health facility's immediate
27 staffing needs through alternative efforts, including
28 requesting off-duty staff to voluntarily report to work,
29 requesting on-duty staff to volunteer for overtime hours, and
30 recruiting per diem and registry staff to report to work.

31 (3) The exemption under this paragraph "a" shall not
32 exceed the duration of the declared state of emergency or the
33 health facility's direct role in responding to medical needs
34 resulting from the declared state of emergency, whichever is
35 less.

1 b. During a declared state of emergency for which a health
2 facility is requested or otherwise reasonably may be expected
3 to provide an exceptional level of emergency or other medical
4 services to the community, the maximum hours limitation in
5 subsection 2, paragraph "a", shall be lifted to the following
6 extent:

7 (1) Health facility employees may work or remain on duty
8 for more than the maximum hour limitations set forth in
9 subsection 2, paragraph "a", provided that all of the
10 following conditions are met:

11 (a) The decision to work the additional time is
12 voluntarily made by the individual health facility employee
13 affected.

14 (b) The health facility employee is given at least one
15 uninterrupted four-hour rest period before commencing the
16 first sixteen hours of duty and an uninterrupted eight-hour
17 rest period at the completion of twenty-four hours of duty.

18 (c) A health facility employee shall not work or remain on
19 duty for more than twenty-eight consecutive hours in a
20 seventy-two-hour period.

21 (d) A health facility employee who has been on duty for
22 more than sixteen hours in a twenty-four-hour period who
23 informs the health facility that the employee requires
24 immediate rest must be relieved from duty as soon as possible,
25 consistent with patient safety needs, and given at least eight
26 uninterrupted hours off duty before being required to return
27 for duty.

28 (2) As used in this paragraph "b", "rest period" means a
29 period in which an individual may be required to remain on the
30 premises of the health facility, but is not subject to
31 restraint or duty or responsibility for work or duty should
32 the occasion arise.

33 (3) The exemption in this paragraph "b" shall not exceed
34 the duration of the declared state of emergency or the health
35 facility's direct role in responding to medical needs

1 resulting from the declared state of emergency, whichever is
2 less.

3 4. A work shift schedule or overtime program established
4 pursuant to a collective bargaining agreement negotiated on
5 behalf of the health facility employees by a bona fide labor
6 organization may provide for mandatory on-duty hours in excess
7 of those permitted under this section, provided adequate
8 measures are included in the agreement to ensure against
9 excessive fatigue on the part of the affected employees.

10 Sec. 6. NEW SECTION. 135M.6 EMPLOYEE RIGHTS.

11 1. As a condition of licensure, each health facility shall
12 adopt and disseminate to direct-care nursing staff a written
13 policy that complies with the requirements set forth in this
14 section detailing the circumstances under which a direct-care
15 nurse may refuse a work assignment. At a minimum, the work
16 assignment policy shall permit a direct-care nurse to refuse
17 an assignment for which:

18 a. The nurse is not prepared by education, training, or
19 experience to safely fulfill the assignment without
20 compromising or jeopardizing patient safety, the nurse's
21 ability to meet foreseeable patient needs, or the nurse's
22 license.

23 b. The nurse has volunteered to work overtime but
24 determines that the nurse's level of fatigue or decreased
25 alertness would compromise or jeopardize patient safety, the
26 nurse's ability to meet foreseeable patient needs, or the
27 nurse's license.

28 c. The assignment otherwise would violate requirements
29 specified in this chapter.

30 2. At a minimum, the work assignment policy shall contain
31 procedures for all of the following:

32 a. Reasonable requirements for prior notice to the nurse's
33 supervisor regarding the nurse's request and supporting
34 reasons for being relieved of the assignment or continued
35 duty.

1 b. If feasible, an opportunity for the supervisor to
2 review the specific conditions supporting the nurse's request
3 to be relieved of the assignment or continued duty, and to
4 decide whether to remedy the conditions, to relieve the nurse
5 of the assignment, or to deny the nurse's request.

6 c. A process which permits the nurse to exercise the right
7 to refuse the assignment or continued on-duty status when the
8 supervisor denies the request to be relieved if all of the
9 following apply:

10 (1) The supervisor rejects the request without proposing a
11 remedy or the proposed remedy would be inadequate or untimely.

12 (2) The complaint and investigation process provided
13 through the department of inspections and appeals would be
14 untimely to address the concern.

15 (3) The employee in good faith believes that the
16 assignment meets the conditions justifying refusal.

17 3. A health facility shall not penalize or discriminate or
18 retaliate in any manner against a health facility employee
19 with respect to compensation, terms, conditions, or privileges
20 of employment, who in good faith, individually, or in
21 conjunction with another person or persons does any of the
22 following:

23 a. Reports a violation or suspected violation of this
24 chapter to a public regulatory agency, a private accreditation
25 body, or management personnel of the health facility.

26 b. Initiates, cooperates with, or otherwise participates
27 in an investigation or proceeding brought by a regulatory
28 agency or private accreditation body concerning matters
29 covered by this chapter.

30 c. Informs or discusses with other employees, with a
31 representative of the employees, with patients or a patient
32 representative, or with the public, violations or suspected
33 violations of this chapter.

34 d. Otherwise avails the employee of the rights established
35 in this chapter.

1 4. For the purposes of this section, a health facility
2 employee is deemed to act in good faith if the employee
3 reasonably believes all of the following:

4 a. That the information reported or disclosed is true.

5 b. That a violation has occurred or may occur.

6 5. a. Any health facility that violates section 135M.5 or
7 this section may be held liable to any employee affected in an
8 action brought in a court of competent jurisdiction for such
9 legal or equitable relief as may be appropriate to effectuate
10 the purposes of this chapter, including but not limited to
11 reinstatement, promotion, payment of lost wages and benefits,
12 and payment of compensatory and consequential damages
13 resulting from the violation together with an equal amount in
14 liquidated damages. The court in such action shall, in
15 addition to any judgment awarded to the plaintiff, award
16 reasonable attorney fees and costs of action to be paid by the
17 defendant.

18 b. The employee's right to institute a private action
19 under this subsection is not limited by any other rights
20 granted under this chapter.

21 Sec. 7. NEW SECTION. 135M.7 ENFORCEMENT -- PENALTIES.

22 1. A health facility shall post in a conspicuous place
23 readily accessible to the general public, a notice prepared by
24 the department of inspections and appeals specifying in
25 summary form the mandatory provisions of this chapter.

26 2. Mandatory and actual nurse staffing levels in each
27 nursing department or unit shall be posted daily in a
28 conspicuous place readily accessible to the general public.

29 3. a. Upon request, the health facility shall make copies
30 of the staffing plan, filed with the department of inspections
31 and appeals, available to the general public.

32 b. Each nursing department or unit within a health
33 facility shall post or otherwise make readily available to the
34 nursing staff, during each work shift, all of the following:

35 (1) A copy of the current staffing plan for that

1 department or unit.

2 (2) Documentation of the number of direct-care nursing
3 staff required to be present during the shift, based on the
4 approved adopted acuity system.

5 (3) Documentation of the actual number of direct-care
6 nursing staff present during the shift.

7 4. The department of inspections and appeals shall enforce
8 this chapter and shall adopt rules necessary for enforcement.

9 At a minimum, the rules shall provide for:

10 a. Unannounced, random compliance site visits to health
11 facilities.

12 b. An accessible and confidential system for the public
13 and nursing staff to report a health facility's failure to
14 comply with this chapter.

15 c. A systematic means for investigating and correcting
16 violations of this chapter.

17 d. Public access to information regarding reports of
18 inspections, results, deficiencies, and corrections.

19 e. A process for imposing penalties for violations of the
20 staffing requirements of this chapter.

21 5. The department of inspections and appeals and the
22 department of workforce development shall have concurrent
23 jurisdiction to ensure compliance with this chapter and to
24 implement rules and regulations as necessary or appropriate to
25 carry out this function.

26 6. a. A determination that a health facility has violated
27 this chapter may result in revocation of the health facility's
28 licensure.

29 b. (1) A health facility that violates any staffing
30 requirements specified in section 135M.4 is subject to a fine
31 of not less than fifteen thousand dollars per day, per
32 violation, for each day that the violation occurs or
33 continues.

34 (2) A health facility that fails to post a notice required
35 under this chapter is subject to a fine of one thousand

1 dollars per day for each day that the required notice is not
2 posted.

3 (3) A health facility that violates section 135M.5 or
4 135M.6 is subject to a fine of fifteen thousand dollars per
5 violation.

6 (4) A person or health facility that fails to report or
7 falsifies information, or coerces, threatens, intimidates, or
8 otherwise influences another person to fail to report or to
9 falsify information required to be reported under this
10 chapter, is subject to a fine of up to fifteen thousand
11 dollars for each such incident.

12 c. Upon investigation, the department of inspections and
13 appeals shall notify the health facility of all deficiencies
14 in the facility's compliance with this chapter and the rules
15 adopted under this chapter. The notice may include an order
16 to take corrective action within a specified time period,
17 including but not limited to any of the following:

18 (1) Revising the facility staffing plan.

19 (2) Reducing the number of patients within a nursing
20 department or unit.

21 (3) Temporarily closing a nursing department or unit to
22 any further patient admissions until corrections are made.

23 (4) Temporarily transferring patients to another nursing
24 department or unit within the facility until corrections are
25 made.

26 d. (1) The department of inspections and appeals may
27 issue an order of correction as follows:

28 (a) On an emergency basis, without prior notice or
29 opportunity for a hearing, if an investigation determines that
30 patient care is being compromised in a manner that poses an
31 immediate jeopardy to the health or safety of patients.

32 (b) In accordance with the provisions for suspension of
33 licensure of a health facility in chapter 135B.

34 (2) The order of correction shall be in writing and shall
35 contain a statement of the reasons for the order.

1 (3) Upon the failure of a health facility to comply with
2 an order of correction in a timely manner, the department of
3 inspections and appeals may take such action the department
4 deems appropriate, including but not limited to:

5 (a) Appointing an administrative overseer for the
6 facility.

7 (b) Closing the facility or unit to patient admissions.

8 (c) Placing the health facility's emergency room on bypass
9 status.

10 (d) Revoking the health facility's license.

11 e. Any person who willfully violates this chapter in a
12 manner that evidences a pattern or practice of violations
13 which is likely to have a serious and adverse impact on
14 patient care or the potential for serious injury or death for
15 patients or employees is guilty of an aggravated misdemeanor.

16 f. (1) A determination that a health facility has
17 violated the provisions of this chapter shall result in an
18 order of reimbursement to the medical assistance program or in
19 termination from participation in the medical assistance
20 program for a period of time to be determined by the
21 department of inspections and appeals in consultation with the
22 department of human services.

23 (2) A health facility that falsifies or causes to be
24 falsified documentation required by this chapter shall be
25 prohibited from receiving any medical assistance reimbursement
26 for a period of six months.

27 EXPLANATION

28 This bill relates to staffing requirements for health
29 facilities. For the purposes of the bill, "health facility"
30 means an acute care hospital, an outpatient surgical facility,
31 or an institution operating as a psychiatric hospital or
32 operating a designated psychiatric unit, regulated by the
33 department of inspections and appeals.

34 The bill specifies facility staffing standards, prohibits
35 mandatory overtime, specifies maximum hours that a health

1 facility employee may work or be on duty, provides for
2 exceptions under a state of emergency, establishes rights for
3 nursing staff of a health facility, and protects health
4 facility employees from retaliation for reporting or otherwise
5 publicizing violations or suspected violations.

6 The bill provides for a private right of action for a nurse
7 if a health facility violates the provisions of the bill,
8 provides for public disclosure of violations of the bill,
9 provides for regulatory oversight by the department of
10 inspections and appeals, provides civil penalties, and
11 provides a criminal penalty of an aggravated misdemeanor which
12 carries with it a maximum penalty not to exceed two years and
13 a fine of at least \$500 but not to exceed \$5,000 for a willful
14 violation of the Code chapter that evidences a pattern or
15 practice of violation and is likely to have serious and
16 adverse impact on patient care or the potential for serious
17 injury or death for patients or employees. The bill also
18 provides for the loss of reimbursement for a health facility
19 under the medical assistance program for violation of the
20 chapter.

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