

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 692 Session of
2005

INTRODUCED BY TARTAGLIONE, MUSTO, RAFFERTY, COSTA, O'PAKE, ORIE,
STACK, KITCHEN, PIPPY, C. WILLIAMS, FERLO, BOSCOLA, STOUT,
HUGHES, KASUNIC, CONTI, LAVALLE, MELLOW, LOGAN, PUNT, FUMO,
A. WILLIAMS AND WOZNIAK, MAY 23, 2005

REFERRED TO LABOR AND INDUSTRY, MAY 23, 2005

AN ACT

1 Prohibiting mandatory overtime and excessive duty hours of
2 certain health care workers; and prescribing penalties.

3 The General Assembly of the Commonwealth of Pennsylvania
4 hereby enacts as follows:

5 Section 1. Short title.

6 This act shall be known and may be cited as the Health Care
7 Worker and Patient Protection Act.

8 Section 2. Legislative findings.

9 The General Assembly finds and declares as follows:

10 (1) The Commonwealth has a substantial interest in
11 assuring that the delivery of health care services to
12 patients in health care facilities is adequate and safe.

13 (2) Research documents that higher staffing levels for
14 direct care and clinical services workers result in better
15 patient outcomes. Despite this result, health care providers
16 report substantial difficulties in recruiting and retaining
17 sufficient numbers of nursing and clinical staff. This is

evidenced by the growing number of licensed nurses who are not engaged in the practice of nursing.

(3) Job dissatisfaction and mandatory overtime are contributing to the departure of nurses, certified nursing assistants, radiological technicians and other direct care and clinical services workers from their profession.

(4) The widespread practice of requiring nurses and other direct patient care clinical services workers to work extended shifts and forgo days off causes these health care providers to frequently provide care in a state of fatigue, contributing to medical errors and other consequences that compromise patient safety.

(5) Limitations on mandatory overtime will ensure that health care facilities operate in a manner that safeguards public safety and guarantees the delivery of quality health care services and facilitates the retention and recruitment of nurses and other direct patient care providers.

Section 3. Definitions.

The following words and phrases when used in this act shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Department." The Department of Health of the Commonwealth.

"Employee." An individual employed by a health care facility or by the Commonwealth or its political subdivisions or instrumentalities, who is involved in direct patient care activities or clinical services and who receives an hourly wage or is classified as a nonsupervisory employee for collective bargaining purposes. The term includes an individual employed through a personnel agency that contracts with a health care facility to supply personnel. The term does not include a

1 physician.

2 "Employer." An individual, partnership, association,
3 corporation or government entity, including the Commonwealth,
4 its political subdivisions and instrumentalities, acting
5 directly or indirectly in the interest of a health care
6 facility.

7 "Health care facility." Any health care facility providing
8 clinically related health services, including, but not limited
9 to, a general or special hospital, including psychiatric
10 hospitals, rehabilitation hospitals, hospices, ambulatory
11 surgical facilities, long-term care nursing facilities, cancer
12 treatment centers using radiation therapy on an ambulatory basis
13 and inpatient drug and alcohol treatment facilities, both profit
14 and nonprofit and including those operated by an agency of State
15 or local government. The term shall also include any facility
16 providing clinically related health services that is operated by
17 the Department of Corrections, Department of Military and
18 Veterans Affairs, Department of Health or Department of Public
19 Welfare. The term shall not include an office used primarily for
20 the private or group practice by health care practitioners where
21 no reviewable clinically related health service is offered, a
22 facility providing treatment solely on the basis of prayer or
23 spiritual means in accordance with the tenets of any church or
24 religious denomination or a facility conducted by a religious
25 organization for the purpose of providing health care services
26 exclusively to clergy or other persons in a religious profession
27 who are members of the religious denominations conducting the
28 facility.

29 "On-call time." Time spent by an employee who is not
30 currently working on the premises of the place of employment,

1 but who is compensated for availability or as a condition of
2 employment has agreed to be available to return to the premises
3 of the place of employment on short notice if the need arises.

4 "Reasonable efforts." Attempts by an employer to:

5 (1) Seek persons who volunteer to work extra time from
6 all available qualified staff who are working at the time of
7 the unforeseen emergent circumstance.

8 (2) Contact all qualified employees who have made
9 themselves available to work extra time.

10 (3) Seek the use of per diem staff.

11 (4) Seek personnel from a contracted temporary agency
12 when such staff is permitted by law or regulation.

13 "Unforeseeable emergent circumstance." Either of the
14 following:

15 (1) An unforeseen declared national, State or municipal
16 emergency, disaster or catastrophic event which substantially
17 affects or increases the need for health care services.

18 (2) An unpredictable or unavoidable occurrence at
19 unscheduled intervals related to health care delivery that
20 requires immediate attention.

21 This term does not include vacancies that arise as a result of
22 chronic short staffing.

23 Section 4. Prohibition of mandatory overtime.

24 (a) General rule.--Notwithstanding any other provision of
25 law or any provision of a collective bargaining agreement or
26 other employer-employee contract, no health care facility or
27 employer may require an employee to accept work in excess of an
28 agreed to, predetermined and regularly scheduled daily work
29 shift not to exceed 80 hours in a two-week period. Part-time
30 employees may not be required to work in excess of an agreed to,

1 predetermined and regularly scheduled daily work shift.

2 (b) Voluntary acceptance.--An employee may voluntarily
3 accept work in excess of an agreed to, predetermined and
4 regularly scheduled daily work shift. The refusal of an employee
5 to accept such overtime work shall not be grounds for
6 discrimination, dismissal, discharge or any other employment
7 decision adverse to the employee.

8 (c) Applicability.--The provisions of this section shall not
9 apply in the case of an unforeseen emergent circumstance when
10 all of the following apply:

11 (1) The overtime is required only as a last resort and
12 is not used to fill vacancies resulting from chronic short
13 staffing.

14 (2) The health care facility or employer has exhausted
15 reasonable efforts to obtain staffing, unless there is a
16 declared national, State or municipal emergency or a disaster
17 or other catastrophic event which substantially affects or
18 increases the need for health care services.

19 (d) Time for making caregiver arrangements.--In the event of
20 an unforeseeable emergent circumstance, the health care facility
21 or employer shall provide the employee the necessary time, up to
22 one hour, to arrange for the care of the employee's minor
23 children or elderly or disabled family members.

24 Section 5. Applicability.

25 (a) Collective bargaining agreements and contracts.--
26 Nothing in this act shall supersede or negate any provisions of
27 a collective bargaining agreement or other employer-employee
28 contract which provide greater limitations on mandatory overtime
29 than required by this act.

30 (b) Long-term care and assisted living facilities.--The

1 provisions of this act shall not apply to employees of long-term
2 care or assisted living facilities licensed by the department
3 who are provided with room and board as a benefit of their
4 employment and reside in the facility on a full-time basis.

5 (c) On-call time.--The provisions of this act shall not
6 apply to on-call time but nothing in this act shall be construed
7 to permit an employer to use on-call time as a substitute for
8 mandatory overtime.

9 Section 6. Regulations.

10 The department in consultation with the Attorney General
11 shall adopt regulations within six months of the effective date
12 of this act to administer and enforce the provisions of this
13 act.

14 Section 7. Penalty.

15 The department may levy an administrative fine on any
16 employer that violates this act or any regulation issued under
17 this act. The fine shall be not less than \$100 nor greater than
18 \$500 for each violation. The employer shall have the right to an
19 adjudication pursuant to 2 Pa.C.S. Ch. 5 Subch. A (relating to
20 practice and procedure of Commonwealth agencies) with appeal to
21 the Commonwealth Court pursuant to 2 Pa.C.S. Ch. 7 (relating to
22 judicial review).

23 Section 21. Effective date.

24 This act shall take effect in one year.