

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 834 Session of  
2007

INTRODUCED BY SURRA, DIGIROLAMO, SOLOBAY, BELFANTI, BIANCUCCI,  
BISHOP, BRENNAN, BUXTON, CALTAGIRONE, CAPPELLI, CARROLL,  
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McILVAINE SMITH, STABACK, STURLA, TANGRETTI, R. TAYLOR,  
WAGNER, WALKO, WANSACZ, J. WHITE, YOUNGBLOOD AND YUDICHAK,  
MARCH 19, 2007

REFERRED TO COMMITTEE ON LABOR RELATIONS, MARCH 19, 2007

AN ACT

1 Relating to hours of employment of health-care employees;  
2 providing for penalties and remedies; and imposing powers and  
3 duties on the Department of Labor and Industry.

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

6 Section 1. Short title.

7 This act shall be known and may be cited as the Prohibition  
8 of Excessive Overtime in Health Care Act.

9 Section 2. Definitions.

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

13 "Clinical care services." The diagnostic, treatment, or

1 rehabilitative services provided in a health care facility,  
2 including the following: radiology and diagnostic imaging, such  
3 as magnetic resonance imaging and positron emission tomography;  
4 radiation therapy; phlebotomy; electrocardiogram and  
5 electroencephalography; and laboratory medical services.

6 "Department." The Department of Labor and Industry of the  
7 Commonwealth.

8 "Employee." An individual employed by a health care facility  
9 or by the Commonwealth or a political subdivision or  
10 instrumentality of the Commonwealth who is involved in direct  
11 patient care activities or clinical care services and who  
12 receives an hourly wage or is classified as a nonsupervisory  
13 employee for collective bargaining purposes. The term includes  
14 an individual employed through a personnel agency that contracts  
15 with a health care facility to provide personnel. The term does  
16 not include a physician; physician assistant; dentist; or worker  
17 involved in environmental services, clerical, maintenance, food  
18 service or other job classification not involved in direct  
19 patient care and clinical care services.

20 "Health care facility." A facility which provides clinically  
21 related health services, regardless of whether the operation is  
22 for profit or nonprofit and regardless of whether operation is  
23 by the private sector or by State or local government.

24 (1) The term includes all of the following:

25 (i) A general or special hospital, a psychiatric  
26 hospital, a rehabilitation hospital, a hospice, an  
27 ambulatory surgical facility, a long-term care nursing  
28 facility, a cancer treatment center using radiation  
29 therapy on an ambulatory basis and an inpatient drug and  
30 alcohol treatment facility.

(ii) A facility which provides clinically related health services and which is operated by the Department of Corrections, the Department of Health, the Department of Military and Veterans Affairs or the Department of Public Welfare.

(iii) A mental retardation facility operated by the Department of Public Welfare.

(2) The term does not include any of the following:

(i) An office used primarily for the private or group practice by a health care practitioner.

(ii) A facility providing treatment solely on the basis of prayer or spiritual means in accordance with the tenets of a church or a religious denomination.

(iii) A facility conducted by a religious organization for the purpose of providing health care services exclusively to clergy or other individuals in a religious profession who are members of the religious denomination conducting the facility.

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

(1) is compensated for availability; or

(2) as a condition of employment, has agreed to be available to return to the premises of the place of employment on short notice if the need arises.

"Reasonable efforts." Attempts by a health care facility to:

(1) seek persons who volunteer to work extra time from all available qualified staff who are working at the time of the unforeseeable emergent circumstance;

(2) contact all qualified employees who have made

1 themselves available to work extra time;

2 (3) seek the use of per diem staff; or

3 (4) seek personnel from a contracted temporary agency  
4 when such staff is permitted by law or regulation.

5 "Unforeseeable emergent circumstance." Either of the  
6 following:

7 (1) An unforeseeable declared national, State or  
8 municipal emergency.

9 (2) A catastrophic event which is unpredictable or  
10 unavoidable and which substantially affects or increases the  
11 need for health care services.

12 The term does not include vacancies that arise as a result of  
13 chronic short staffing.

14 Section 3. Prohibition of mandatory overtime.

15 (a) General rule.--Except as set forth in subsection (c),  
16 all of the following apply:

17 (1) A health care facility may not require an employee  
18 to work in excess of an agreed to, predetermined and  
19 regularly scheduled daily work shift.

20 (2) This subsection shall not be construed to prevent an  
21 employee from voluntarily accepting work in excess of these  
22 limitations.

23 (3) This subsection shall not be construed:

24 (i) To prevent an employee from working an agreed  
25 to, predetermined and regularly scheduled daily work  
26 shift that is greater than eight hours.

27 (ii) To preclude the hiring of part-time or per diem  
28 employees by a health care facility.

29 (b) Retaliation prohibited.--The refusal of an employee to  
30 accept work in excess of the limitations set forth in subsection

1 (a) shall not be grounds for discrimination, dismissal,  
2 discharge or any other employment decision adverse to the  
3 employee.

4 (c) Exception.--The provisions of subsection (a) shall not  
5 apply to any of the following:

6 (1) On-call time. Nothing in this paragraph shall be  
7 construed to permit a health care facility or employer to use  
8 on-call time as a substitute for mandatory overtime or a  
9 means of circumventing the intent of this act.

10 (2) If an unforeseeable emergent circumstance occurs  
11 and:

12 (i) the assignment of additional hours is used as a  
13 last resort;

14 (ii) the health care facility or employer has  
15 exhausted reasonable efforts to obtain other staffing;  
16 and

17 (iii) the health care facility or employer provides  
18 the employee up to one hour to arrange for the care of  
19 the employee's minor child or elderly or disabled family  
20 member.

21 (3) When an employee is required to work overtime to  
22 complete a patient care procedure already in progress if the  
23 absence of the employee could have an adverse effect on the  
24 patient.

25 (d) Off-duty time.--An employee who is required to work more  
26 than 12 consecutive hours per workday pursuant to subsection (c)  
27 or who volunteers to work more than 12 consecutive hours shall  
28 be entitled to at least ten consecutive hours of off-duty time  
29 immediately after the worked overtime. An employee may  
30 voluntarily waive the requirements of this subsection.

1 Section 4. Collective bargaining.

2 Nothing in this act shall prevent an employer or health care  
3 facility from providing employees more protection from mandatory  
4 overtime than the minimum established under this act.

5 Section 5. Regulations.

6 The department shall, within 18 months of the effective date  
7 of this section, promulgate regulations to implement this act.

8 Section 6. Penalties.

9 (a) Administrative fine.--The department may levy an  
10 administrative fine on a health care facility or employer that  
11 violates this act or any regulation issued under this act. The  
12 fine shall be not less than \$100 nor greater than \$1,000 for  
13 each violation.

14 (b) Administrative order.--The department may order a health  
15 care facility to take an action which the department deems  
16 necessary to correct a violation of section 3.

17 (c) Administrative Agency Law.--This section is subject to 2  
18 Pa.C.S. Ch. 5 Subch. A (relating to practice and procedure of  
19 Commonwealth agencies) and Ch. 7 Subch. A (relating to judicial  
20 review of Commonwealth agency action).

21 Section 20. Effective date.

22 This act shall take effect as follows:

23 (1) The following provisions shall take effect  
24 immediately:

25 (i) Section 5.

26 (ii) This section.

27 (2) The remainder of this act shall take effect in 90  
28 days.