

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1400 Session of
2003

INTRODUCED BY SURRA, CAPPELLI, VEON, BELARDI, DIGIROLAMO,
GRUCELA, CREIGHTON, BEBKO-JONES, BELFANTI, BLAUM, CASORIO,
COHEN, COSTA, CRUZ, CURRY, DALEY, DeLUCA, EACHUS, FABRIZIO,
FREEMAN, GEORGE, GOODMAN, HANNA, HARHAI, HORSEY, JAMES,
JOSEPHS, LAUGHLIN, LEACH, LEDERER, LEVDANSKY, MANDERINO,
McGEEHAN, MELIO, MUNDY, PALLONE, PETRARCA, PISTELLA, ROBERTS,
ROONEY, SAINATO, SANTONI, SCRIMENTI, SHANER, SOLOBAY,
STETLER, TANGRETTI, THOMAS, TIGUE, TRAVAGLIO, WALKO, WANSACZ,
WASHINGTON, WATERS, WHEATLEY, YOUNGBLOOD AND YUDICHAK,
MAY 7, 2003

REFERRED TO COMMITTEE ON LABOR RELATIONS, MAY 7, 2003

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

1 patient outcomes. Despite this result, health care providers
2 report substantial difficulties in recruiting and retaining
3 sufficient numbers of nursing and clinical staff. This is
4 evidenced by the growing number of licensed nurses who are
5 not engaged in the practice of nursing.

6 (3) While job dissatisfaction and mandatory overtime are
7 contributing to the departure of nurses, certified nursing
8 assistants, radiological technicians and other direct care
9 and clinical services workers from their profession, health
10 care providers continue to make use of mandatory overtime as
11 a method of staffing.

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

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

23 Section 3. Definitions.

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

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

28 "Employee." An individual employed by a health care facility
29 or the Commonwealth who is involved in direct patient care
30 activities or clinical services and who receives an hourly wage

1 or is classified as a nonsupervisory employee for collective
2 bargaining purposes.

3 "Employer." An individual, partnership, association,
4 corporation or government entity acting directly or indirectly
5 in the interest of a health care facility.

6 "Health care facility." As defined in section 103 of the act
7 of July 19, 1979 (P.L.130, No.48), known as the Health Care
8 Facilities Act. The term also includes any health care facility
9 providing clinically related health services that is operated by
10 the Department of Corrections.

11 "On-call time." Time spent by an employee who is not
12 currently working on the premises of the place of employment,
13 but who is compensated for availability or as a condition of
14 employment has agreed to be available to return to the premises
15 of the place of employment on short notice if the need arises.

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

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

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

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

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

25 "Unforeseeable emergent circumstance." Either of the
26 following:

27 (1) An unforeseen declared national, State or municipal
28 emergency.

29 (2) A catastrophic event which is unpredictable or
30 unavoidable and which substantially affects or increases the

1 need for health care services.

2 This term does not include vacancies that arise as a result of
3 chronic short staffing or a labor dispute.

4 Section 4. Certain agreements void.

5 (a) General rule.--A requirement in a contract, agreement or
6 understanding shall be void and unenforceable if it requires
7 that an employee of a health care facility accept work in excess
8 of an agreed to, predetermined and regularly scheduled daily
9 work shift, not to exceed 80 hours per two-week period, except
10 in the case of an unforeseen emergent circumstance when:

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; and

14 (2) the employer has exhausted reasonable efforts to
15 obtain staffing.

16 (b) Applicability.--This section shall apply to contracts,
17 agreements and understandings executed or renewed after the
18 effective date of this act.

19 Section 5. Prohibition of mandatory overtime.

20 (a) General rule.--Notwithstanding any other provision of
21 law, no health care facility may require an employee to accept
22 work in excess of an agreed to, predetermined and regularly
23 scheduled daily work shift not to exceed 80 hours in a two-week
24 period. Part-time employees may not be required to work in
25 excess of an agreed to, predetermined and regularly scheduled
26 daily work shift.

27 (b) Voluntary acceptance.--An employee may voluntarily
28 accept work in excess of an agreed to, predetermined and
29 regularly scheduled daily work shift, not to exceed 80 hours per
30 two-week period. The refusal of an employee to accept such

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

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

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

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

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

20 Section 6. Applicability.

21 (a) Collective bargaining agreements and contracts.--The
22 provisions of this act shall not be construed to impact or
23 negate any employer-employee collective bargaining agreement or
24 any other employer-employee contract in effect on the effective
25 date of this act. However, any such collective bargaining
26 agreement or contract which includes mandatory overtime as a
27 condition of employment shall be renegotiated within six months
28 of the effective date of this act.

29 (b) Long-term care and assisted living facilities.--The
30 provisions of this act shall not apply to employees of long-term

1 care or assisted living facilities licensed by the department
2 who are provided with room and board as a benefit of their
3 employment and reside in the facility on a full-time basis.

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

8 Section 19. Regulations.

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

13 Section 20. Penalty.

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

22 Section 21. Effective date.

23 This act shall take effect in one year.