Alaska State Legislature

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Senator_Bettye_Davis@legis.state.ak.us
http://www.akdemocrats.org

Office of Senator Bettye Davis

March 25, 2009
Senator Joe Paskvan, Chair
Senate Labor & Commerce Committee

RE: Request for Hearing for SB 12, Limiting Nurses' Mandatory Overtime

"An Act relating to limitations on mandatory overtime for registered nurses and licensed practical nurses in health care facilities; and providing for an effective date."

Dear Senator Paskvan:

Senator Davis respectfully requests a hearing in the Senate Labor & Commerce Committee on Senate Bill 12, limiting Nurses Mandatory Overtime, which was just moved from Senate HSS to L&C as next committee of referral. Attached are:

- Sponsor Statement
- Current version of bill, no amendments, no committee substitute
- Sectional Summary
- Fiscal notes
- Additional documentation

If you have any questions, or need additional information, please give me a call.

Thomas S. Obermeyer
Legislative Adm. Asst.
465-3762

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Senator Bettye Davis

Senate Bill 12 26-LS0075\R

"An Act relating to limitations on mandatory overtime for registered nurses and licensed practical nurses in health care facilities; and providing for an effective date."

Sponsor Statement

SB 12 prevents registered nurses and licensed practical nurses from being forced to work mandatory overtime, *i.e.,* work beyond an agreed to, predetermined, regularly scheduled shift, and it protects patients from the dangers caused by overworked nurses. Senate Bill 12 is applicable to all hospitals and health care facilities licensed in Alaska. Under SB 12 a nurse may not be required or coerced directly or indirectly to work more than 14 consecutive hours without 10 hours of rest; beyond 80 hours in a 14-day period; or to accept an assignment of overtime if, in the judgment of the nurse, the overtime would jeopardize patient or employee safety. Nurses, however, can volunteer to work additional shifts beyond this limit, so long as the nurse does not work more than 14 consecutive hours without 10 hours of rest.

In recognizing the complexity in delivering quality nursing care on a 24-hour basis, a number of concessions have been made to Alaska hospitals in this bill. The 14-hour maximum workday with 10 hours rest, which exceeds that allowed in many other states, permits a two-hour transition for nursing supervisors to call in additional help after 12-hour shifts. This provision was intended to help remedy the problem of nurses being called back to work without adequate rest after working a 12-hour shift. Also, exceptions have been provided for flight nurses on medical transport, school nurses on school sponsored field trips, and official state emergencies. This bill limits hospital reporting of hours to twice a year; it eliminates triple-time penalties for egregious violations; it limits maximum fines; and it requires enforcement for only "knowing" violations.

There are few official overtime complaints by nurses due to constant attention to patients, busy and varied schedules, and to some extent, fear of direct or indirect retaliation by employers. Many nurses testified to overwork, fatigue, disruption of family life, unexpected shift changes, mandatory overtime, and mandatory on-call over the course of several hearings on a similar bill, SB 28, in the 25th Legislature. Low numbers of complaints and benign exit interviews may belie growing dissatisfaction with the difficult work life of nurses, many of whom report "burn-out" and are leaving the profession.

It has been estimated that 500,000 licensed registered nurses have left or are not working in the profession. There are bills in Congress to stem the nursing shortage, including financial aid for education, and more rigorous regulation of overtime hours, *e.g.,* H.R. 2122, and S.1842 in the 110th Congress, and before that, H.R. 791, "The Safe Nursing and Patient Care Act." The *Journal of the American Medical Association*, October 23-30, 2002, reported that nurses who suffer from fatigue, increased patient work-loads, and shifts in excess of 12 hours greatly increase nursing errors and mortality among patients who have common surgeries. Both nurses and employers alike state that patient safety is paramount, but nurses are allowed to work far beyond their endurance levels, depending on age and condition, unlike other safety-sensitive jobs, including commercial airline pilots, FAA controllers, railroad engineers, and long-haul truckers.

The nursing profession must attract more young people to replace the aging nurses' workforce which nationwide averages 46 years of age and is 95% women. In 2000 only 9% of RNs were under age 25, compared to 25% in 1980. Women are finding alternative career choices, so it is important for the nursing profession to create more jobs for nurses with higher wages, greater responsibilities, and better quality of work life. Although the University of Alaska has made great progress in increasing the numbers of nursing graduates in Alaska and in improving nursing programs at all levels, these efforts can only be successful through employment and retention if the nursing profession can provide a quality of life comparable to that in other competitive fields. SB 12 will help remedy this problem by encouraging employers to employ more nurses rather using mandatory overtime and mandatory on-call with short staffs to fill both routine and critical care positions on a regular basis. The greatest beneficiaries will be the patients who will receive the care and safety they deserve.

SENATE BILL NO. 12

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SIXTH LEGISLATURE - FIRST SESSION

BY SENATOR DAVIS

Introduced: 1/21/09
Referred: Health and Social Services, Labor and Commerce, Finance

A BILL

FOR AN ACT ENTITLED

"An Act relating to limitations on mandatory overtime for registered nurses and licensed practical nurses in health care facilities; and providing for an effective date."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* **Section 1.** The uncodified law of the State of Alaska is amended by adding a new section to read:

LEGISLATIVE FINDINGS AND INTENT. The legislature finds that

(1) it is essential that registered nurses and licensed practical nurses providing direct patient care be available to meet the needs of patients;

(2) quality patient care is jeopardized by registered nurses and licensed practical nurses who work unnecessarily long hours in health care facilities;

(3) registered nurses and licensed practical nurses are leaving their profession because of workplace stresses, long work hours, and depreciation of their essential role in the delivery of quality and direct patient care;

(4) it is necessary to safeguard the efficiency, health, and general well-being

of registered nurses and licensed practical nurses, and the health and general well-being of the persons receiving care from registered nurses and licensed practical nurses in health care facilities;

(5) it is necessary that registered nurses and licensed practical nurses be made aware of their rights, duties, and remedies concerning hours worked and patient safety; and

(6) health care facilities should provide adequate and safe nurse staffing without the need for or use of mandatory overtime.

* **Sec. 2.** AS 18.20 is amended by adding new sections to read:

Article 4. Overtime Limitations for Nurses.

Sec. 18.20.400. Limitations on nursing overtime. (a) Except as provided in (c) of this section, a nurse in a health care facility may not be required or coerced, directly or indirectly,

(1) to work beyond a predetermined and regularly scheduled shift that is agreed to by the nurse and the health care facility;

(2) to work beyond 80 hours in a 14-day period; or

(3) to accept an assignment of overtime if, in the judgment of the nurse, the overtime would jeopardize patient or employee safety.

(b) Except as provided by (c) of this section, after working a predetermined and regularly scheduled shift that is agreed to by the nurse and the health care facility as authorized by (a)(1) of this section, a nurse in a health care facility shall be allowed not less than 10 consecutive hours of off-duty time immediately following the end of that work.

(c) Subsection (a) of this section does not apply to

(1) a nurse who is employed by a health care facility providing services for a school, school district, or other educational institution, when the nurse is on duty for more than 14 consecutive hours during an occasional special event, such as a field trip, that is sponsored by the employer;

(2) a nurse voluntarily working overtime on an aircraft in use for medical transport, so long as the shift worked is allowable under regulations adopted by the Board of Nursing based on accreditation standards adopted by the Commission on Accreditation of Medical Transport Systems;

(3) a nurse on duty in overtime status because of an unforeseen emergency situation that could jeopardize patient safety; in this paragraph, "unforeseen emergency situation" means an unusual, unpredictable, or unforeseen situation caused by an act of terrorism, disease outbreak, natural disaster, major disaster as defined in 42 U.S.C. 5122, or disaster emergency under AS 26.23.020 or 26.23.140, but does not include a situation in which a health care facility has reasonable knowledge of increased patient volume or inadequate staffing because of some other cause, if that cause is foreseeable;

(4) a nurse fulfilling on-call time that is agreed on by the nurse and a health care facility before it is scheduled;

(5) a nurse voluntarily working overtime so long as the work is consistent with professional standards and safe patient care and does not exceed 14 consecutive hours;

(6) a nurse voluntarily working beyond 80 hours in a 14-day period so long as the nurse does not work more than 14 consecutive hours without a 10-hour break and the work is consistent with professional standards and safe patient care;

(7) the first hour on overtime status when the health care facility is obtaining another nurse to work in place of the nurse in overtime status.

Sec. 18.20.410. Health care facility complaint process for overtime work by nurses. A health care facility shall provide for an anonymous process by which a patient or a nurse may make a complaint about staffing levels and patient safety that relate to overtime work by nurses and to limitations on overtime work by nurses under AS 18.20.400.

Sec. 18.20.420. Enforcement, offenses, and penalties. (a) The commissioner shall administer AS 18.20.400 - 18.20.449 and adopt regulations for implementing and enforcing AS 18.20.400 - 18.20.449.

(b) A complaint alleging a violation of AS 18.20.400 - 18.20.449 must be filed with the commissioner within 30 days after the date of the alleged violation. The commissioner shall provide a copy of the complaint to the health care facility named in the filing within three business days after receiving the complaint.

(c) If the commissioner finds that a health care facility has knowingly violated

an overtime provision of AS 18.20.400 - 18.20.449, the following civil penalties shall apply:

(1) for a first violation of AS 18.20.400 - 18.20.449, the commissioner shall reprimand the health care facility;

(2) for a second violation of AS 18.20.400 - 18.20.449 within 12 months, the commissioner shall reprimand the health care facility and assess a penalty of $500;

(3) for a third violation of AS 18.20.400 - 18.20.449 within 12 months, the commissioner shall reprimand the health care facility and assess a penalty of not less than $2,500 but not more than $5,000;

(4) for each violation of AS 18.20.400 - 18.20.449 after a third violation of AS 18.20.400 - 18.20.449 within 12 months, the commissioner shall reprimand the health care facility and assess a penalty of not less than $5,000 but not more than $25,000.

(d) As an employer, a health care facility violates an overtime provision of AS 18.20.400 - 18.20.449 "knowingly" when the facility is either aware that its conduct is of a nature prohibited by the overtime provision or aware that the circumstances described in the overtime prohibition exist; however, when knowledge of the existence of a particular fact is required to establish that the violation was knowing, that knowledge exists when the facility is aware of a substantial probability of its existence, unless the facility reasonably believes it does not exist.

Sec. 18.20.430. Prohibition of retaliation. A health care facility may not discharge, discipline, threaten, discriminate against, penalize, or file a report with the Board of Nursing against a nurse for exercising rights under AS 18.20.400 - 18.20.449 or for the good faith reporting of an alleged violation of AS 18.20.400 - 18.20.449.

Sec. 18.20.440. Enforcement against prohibition of retaliation. The commissioner shall investigate every complaint alleging a violation of AS 18.20.430, and, within 90 days after the date of filing of the complaint, provide to the complainant, the Department of Law, and the health care facility named in the complaint a written determination as to whether the health care facility violated AS 18.20.430. If the commissioner finds a violation of AS 18.20.430, the

commissioner shall request that the Department of Law represent the department and the complainant and obtain from the health care facility all appropriate relief, including rehiring or reinstatement of the complainant to the complainant's former position with back pay.

Sec. 18.20.445. Report requirements. A health care facility shall file with the division of labor standards and safety, Department of Labor and Workforce Development, a semiannual report. The report for the six-month period ending June 30 must be filed before the following August 1, and the report for the six-month period ending December 31 must be filed before the following February 1. The report must include, for each nurse employed by the health care facility or under contract with the health care facility, the number of overtime hours worked, the number of overtime hours that were mandatory, the number of overtime hours that were voluntary, the number of on-call hours, the number of on-call hours that were mandatory, and the number of on-call hours that were voluntary.

Sec. 18.20.449. Definitions. In AS 18.20.400 - 18.20.449,

(1) "commissioner" means the commissioner of labor and workforce development;

(2) "health care facility" means a private, municipal, state, or federal hospital; psychiatric hospital; independent diagnostic testing facility; residential psychiatric treatment center, as defined in AS 18.07.111; skilled nursing facility; kidney disease treatment center, including freestanding hemodialysis units; intermediate care facility; ambulatory surgical facility; Alaska Pioneers' Home or Alaska Veterans' Home administered by the Department of Health and Social Services under AS 47.55; correctional facility owned or administered by the state; juvenile detention facility, juvenile detention home, juvenile work camp, or treatment facility, as defined in AS 47.12.990; private, municipal, state, or federal facility employing one or more public health nurses; long-term care facility; or primary care outpatient facility;

(3) "nurse" means an individual licensed to practice registered nursing or practical nursing under AS 08.68 who provides nursing services through direct patient care or clinical services and includes a nurse manager when delivering in-

hospital patient care;

(4) "on-call" means a status in which a nurse must be ready to report to the health care facility and may be called to work by the health care facility;

(5) "overtime" means the hours worked in excess of a predetermined and regularly scheduled shift that is agreed to by a nurse and a health care facility.

* **Sec. 3.** The uncodified law of the State of Alaska is amended by adding a new section to read:

APPLICABILITY. The first report required to be filed under AS 18.20.445, enacted in sec. 2 of this Act, shall be filed before February 1, 2010, for the period July 1, 2009, through December 31, 2009.

* **Sec. 4.** AS 18.20.445, enacted in sec. 2 of this Act, and sec. 3 of this Act take effect July 1, 2009.

* **Sec. 5.** Except as provided in sec. 4 of this Act, this Act takes effect January 1, 2010.

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Senator Bettye Davis

Senate Bill 12

"An Act relating to limitations on mandatory overtime for registered nurses and licensed practical nurses in health care facilities; and providing for an effective date."

Sectional Analysis

Note: As a preliminary matter, this sectional analysis should not be considered an authoritative interpretation of the bill; the bill itself is the best statement of its contents.

Section 1. Adds a temporary law section on legislative findings and intent concerning administration of overtime provisions in the nursing profession.

Section 2. Adds an "Article 4" to AS 18.20 that includes the following sections concerning working hours for nurses:

Sec. 18.20.0400. Subsection (a) prohibits the use of direct or indirect coercion to cause a nurse in a health care facility to:

(1) "work beyond a predetermined and regularly scheduled shift that is agreed to by the nurse and the health care facility;
(2) work beyond 80 hours in a 14-day period; or to
(3) accept an assignment of overtime if, in the judgment of the nurse, the overtime would jeopardize patient or employee safety."

Subsection (b) requires that the nurse shall not have less than 10 consecutive hours of off-duty time immediately following the end of work on a predetermined and regularly scheduled shift agreed to by the nurse and the health care facility.
Subsection (c) lists exceptions to subsection (a).

Sec. 18.20.410 Provides an anonymous process by which a patient or nurse may make a complaint about staffing levels and patient safety that relates to overtime work by nurses;

Sec. 18.20.420 Provides enforcement; lists offenses and penalties for violations;

Sec. 18.20.430 Prohibits retaliation for reporting alleged violations.

Sec. 18.20.440 Provides enforcement against prohibition of retaliation. Requires the Commissioner of Labor and Workforce Development to investigate all complaints and provide to the complainant a written determination within 90 days.

Sec. 18.20.445 Provides semiannual reporting requirements

Sec. 18.30.449 Defines key words, including "health care facility," "nurse," "on-call," and "overtime."

Section 3. Requires that if the bill becomes law the filing of the first semi-annual reports under AS 18.20.445 must be filed before February 1, 2010 for the period July 1, 2009 through December 31, 2009.

Section 4. requires that the reporting requirements of AS 18.20.445 take effect July 1, 2009.

Section 5. provides that except as provided in sec. 4 of this Act, this Act takes effect January 1, 2010.

FISCAL NOTE

STATE OF ALASKA
2009 LEGISLATIVE SESSION

Fiscal Note Number:
Bill Version: SB070
() Publish Date:

Identifier (file name): SB070-DHSS-MAA-02-26-09
Dept. Affected: DHSS
Title: Naturopaths
RDU: Health Care Services
Component: Medical Assistance Administration
Sponsor: Davis
Requester: Senate HSS
Component Number: 242

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information					
OPERATING EXPENDITURES	**FY 2010**	**FY 2010**	**FY 2011**	**FY 2012**	**FY 2013**	**FY 2014**	**FY 2015**
Personal Services							
Travel							
Contractual	150.0						
Supplies							
Equipment							
Land & Structures							
Grants & Claims							
Miscellaneous							
TOTAL OPERATING	**150.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**
CAPITAL EXPENDITURES							
CHANGE IN REVENUES (							

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts							
1003 GF Match							
1004 GF	150.0						
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other Interagency Receipts							
TOTAL	**150.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**

Estimate of any current year (FY2009) cost:

POSITIONS

Full-time							
Part-time							
Temporary							

ANALYSIS: *(Attach a separate page if necessary)*

This legislation would require the Medicaid program to cover naturopathy services. The Department does not anticipate increased expenditures of Medicaid services as naturopathy services would largely replace other covered services, and any increase in total covered services would be offset by payment of naturopaths at a lower rate than physicians. However, there would be a one-time cost to make system changes to the MMIS, the Department's Medicaid claims processing system. The Department is in the process of replacing its existing MMIS with a new system. Because this change would be made to the old system prior to replacement, it would not be eligible for matching federal reimbursement.

Prepared by: William J. Streur, Deputy Commissioner
Phone 279-7827
Division: Health Care Services
Date/Time 2/11/09 12:00 AM

Approved by: Alison Elgee, Assistant Commissioner
Date 2/26/2009
DHSS Finance & Management Services

(Revised 9/10/2008 OMB)

FISCAL NOTE

STATE OF ALASKA
2009 LEGISLATIVE SESSION

Fiscal Note Number:
Bill Version: SB012
() Publish Date:

Identifier (file name): SB012-DHSS-N-03-06-09
Dept. Affected: Health & Social Services
Title: Limit Overtime for Registered Nurses
RDU: Public Health
Component: Nursing
Sponsor: Davis
Requester: Senate HSS
Component Number:

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information					
OPERATING EXPENDITURES	**FY 2010**	**FY 2010**	**FY 2011**	**FY 2012**	**FY 2013**	**FY 2014**	**FY 2015**
Personal Services							
Travel							
Contractual							
Supplies							
Equipment							
Land & Structures							
Grants & Claims							
Miscellaneous							
TOTAL OPERATING	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**
CAPITAL EXPENDITURES							
CHANGE IN REVENUES (							

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts							
1003 GF Match							
1004 GF							
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other Interagency Receipts							
TOTAL	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**

Estimate of any current year (FY2009) cost:

POSITIONS

Full-time							
Part-time							
Temporary							

ANALYSIS: *(Attach a separate page if necessary)*

This bill sets limitations for nurses working overtime hours beyond the scope of their regular duties. While the language in the bill makes it applicable to public health nurses, it would have a very limited effect on the Division of Public Health Section of Public Health Nursing. Most Public Health Nurses, as salaried enployees, are not overtime eligible.

The mandated semi-annual report to the Department of Labor and Workforce Development would typically require no effort because public health nurses rarely work "in excess of a predetermined and regularly scheduled shift that is agreed upon by the nurse and a health care facility." Normal itinerant schedules, even though they often involve more than a 7.5-hour day, are always predetermined and agreed upon. In addition, the bill exempts reporting requirements for unforeseen emergencies requiring extra work. There is no projected fiscal impact on the Section of Public Health Nursing.

Prepared by: Jay Butler, Chief Medical Officer
Phone 269-8126
Division: Public Health
Date/Time 3/6/09 12:00 AM

Approved by: Alison Elgee, Assistant Commissioner
Date 3/6/2009
DHSS Finance & Management Services

FISCAL NOTE

STATE OF ALASKA
2009 LEGISLATIVE SESSION

Fiscal Note Number:
Bill Version: **SB012**
() Publish Date:

Identifier (file name): **SB012-DHSS-API-03-09-09**
Dept. Affected: Health & Social Services
Title: Limit Overtime for Registered Nurses
RDU: Behavioral Health
Component: Alaska Psychiatric Institute
Sponsor: Davis
Requester: Senate HSS
Component Number: 311

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information					
OPERATING EXPENDITURES	**FY 2010**	**FY 2010**	**FY 2011**	**FY 2012**	**FY 2013**	**FY 2014**	**FY 2015**
Personal Services							
Travel							
Contractual							
Supplies							
Equipment							
Land & Structures							
Grants & Claims							
Miscellaneous							
TOTAL OPERATING	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**
CAPITAL EXPENDITURES							
CHANGE IN REVENUES (							

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts							
1003 GF Match							
1004 GF							
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other Interagency Receipts							
TOTAL	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**

Estimate of any current year (FY2009) cost:

POSITIONS

Full-time		2.0	2.0	2.0	2.0	2.0	2.0
Part-time							
Temporary							

ANALYSIS: *(Attach a separate page if necessary)*

SB12 establishes limitations on overtime for Registered Nurses (RNs) in health care facilities, provides penalties for violations, and requires reporting of any overtime, with the overtime designated as voluntary or mandatory by the RN. The intent of SB12 is to eliminate mandatory overtime for RNs unless the overtime is due to a grave and unforeseen event. Under the bill, use of mandatory overtime in excess of the bill's limitations will result in a report to the Department of Labor.

The division has determined that passage of this bill will have a zero fiscal impact. The option that API will pursue to replace its current policy requiring mandatory overtime is to add two registered psych nurses and develop, in conjunction with the Department of Administration, Division of Personnel and Labor Relations, a

Prepared by: Melissa Stone, Director
Phone 269-3410
Division: Behavioral Health
Date/Time 3/9/09 11:30 AM

Approved by: Alison Elgee, Assistant Commissioner
Date 3/9/2009
DHSS Finance & Management Services

ANALYSIS CONTINUATION

voluntary standby system of employment that would replicate a private sector "on call" system. Any additional costs associated with the positions and "on-call" system will be offset by the cost savings from reduced overtime payment.

FISCAL NOTE

STATE OF ALASKA
2009 LEGISLATIVE SESSION

Fiscal Note Number:
Bill Version: SB012
() Publish Date:

Identifier (file name): SB012-DHSS-PH-03-06-09
Dept. Affected: Health & Social Services
Title: Limit Overtime for Registered Nurses
RDU: Alaskan Pioneer Homes
Component: Pioneers Homes
Sponsor: Davis
Requester: Senate HSS
Component Number:

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information					
OPERATING EXPENDITURES	**FY 2010**	**FY 2010**	**FY 2011**	**FY 2012**	**FY 2013**	**FY 2014**	**FY 2015**
Personal Services							
Travel							
Contractual							
Supplies							
Equipment							
Land & Structures							
Grants & Claims							
Miscellaneous							
TOTAL OPERATING	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**
CAPITAL EXPENDITURES							
CHANGE IN REVENUES (							

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts							
1003 GF Match							
1004 GF							
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other Interagency Receipts							
TOTAL	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**

Estimate of any current year (FY2009) cost:

POSITIONS

Full-time							
Part-time							
Temporary							

ANALYSIS: *(Attach a separate page if necessary)*

SB 12 establishes limitations on overtime for Registered Nurses (RNs) in health care facilities, provides penalties for violations, and requires reporting of any overtime, with the overtime designated as voluntary or mandatory by the RN. The intent of SB12 is to eliminate mandatory overtime for RNs unless the overtime is due to a grave and unforeseen event. Under the bill, use of mandatory overtime in excess of the bill's limitations will result in a report to the Department of Labor.

The division has determined that passage of this bill will have a zero fiscal impact. Situations requiring overtime are adequately addressed by utilizing on-call RNs and requesting voluntary overtime.

Prepared by: Dave Cote, Director
Phone 465-5737
Division: Alaska Pioneer Homes
Date/Time 3/6/09 12:00 AM

Approved by: Alison Elgee, Assistant Commissioner
Date 3/6/2009
DHSS Finance & Management Services

FISCAL NOTE

STATE OF ALASKA
2009 LEGISLATIVE SESSION

Fiscal Note Number:
Bill Version: SB 12
() Publish Date:

Identifier (file name): SB012-DOLWD-WH-03-05-09
Title: Limit Overtime for Registered Nurses
Sponsor: Senator Davis
Requester: Senate Health and Social Services

Dept. Affected: Labor and Workforce Development
RDU: Labor Standard & Safety
Component: Wage and Hour
Component Number: 345

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information					
OPERATING EXPENDITURES	**FY 2010**	**FY 2010**	**FY 2011**	**FY 2012**	**FY 2013**	**FY 2014**	**FY 2015**
Personal Services	73.6		73.6	73.6	73.6	73.6	73.6
Travel	3.0		3.0	3.0	3.0	3.0	3.0
Contractual	18.9		18.9	18.9	18.9	18.9	18.9
Supplies	3.8		0.5	0.5	1.8	0.5	0.5
Equipment							
Land & Structures							
Grants & Claims							
Miscellaneous							
TOTAL OPERATING	**99.3**	**0.0**	**96.0**	**96.0**	**97.3**	**96.0**	**96.0**
CAPITAL EXPENDITURES							
CHANGE IN REVENUES ( )							

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts							
1003 GF Match							
1004 GF	99.3		96.0	96.0	97.3	96.0	96.0
1005 GF/Program Receipts							
1037 GF/Mental Health							
1157 Worker Safety Account							
TOTAL	**99.3**	**0.0**	**96.0**	**96.0**	**97.3**	**96.0**	**96.0**

Estimate of any current year (FY2009) cost: None

POSITIONS

Full-time	1.0		1	1	1	1	1
Part-time							
Temporary							

ANALYSIS: *(Attach a separate page if necessary)*

The bill requires the Department of Labor and Workforce Development to investigate and take enforcement action to resolve complaints of unlawful mandatory overtime use and alleged retaliation. Due to the significant number of registered nurses and licensed practical nurses currently licensed in Alaska (approximately 10,000 RN's and 1,000 LPN's), the department anticipates the workload will require at least one full-time Wage and Hour Investigator I position funded with General Funds. Costs include $73.6 for salary and benefits, $3.0 for investigation travel, $18.9 for contractual which includes normal per position costs such as office space, phone, data processing and administrative support and $5.0 for Department of Law advice and representation, $0.5 for office supplies and an additional $3.3 for office furniture and equipment in the first year and an additional $1.3 for computer equipment replacement in the fourth year.

Prepared by: Grey Mitchell, Director — Phone 465-4855
Division: Labor Standard & Safety — Date/Time 3/5/09 2:51 PM
Approved by: Click Bishop, Commissioner — Date 3/5/09
Agency: Department of Labor and Workforce Development

(Revised 9/2008 OMB)

FISCAL NOTE

STATE OF ALASKA
2009 LEGISLATIVE SESSION

Fiscal Note Number:
Bill Version: SB12-DOC-OC-02-20-09
() Publish Date:

Identifier (file name): SB12-DOC-OC-02-20-09
Dept. Affected: DOC
Title "Act relating to limitations on mandatory overtime for registered nurses and licensed practical nurses in health care facilities; ...."
RDU Adminstration & Support
Component Office of the Commissioner
Sponsor Senator Davis
Requester Governor
Component Number 694

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information					
OPERATING EXPENDITURES	**FY 2010**	**FY 2010**	**FY 2011**	**FY 2012**	**FY 2013**	**FY 2014**	**FY 2015**
Personal Services							
Travel							
Contractual							
Supplies							
Equipment							
Land & Structures							
Grants & Claims							
Miscellaneous							
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES							
CHANGE IN REVENUES ( )							

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts							
1003 GF Match							
1004 GF							
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other Interagency Receipts							
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2009) cost: _____

POSITIONS

Full-time							
Part-time							
Temporary							

ANALYSIS: *(Attach a separate page if necessary)*

SB12 would place limitations on mandatory overtime for registered nurses and licensed practical nurses within health care facilities.

Passage of this legislation should have no impact to the Department of Corrections.

Prepared by: Leslie Houston, Director
Division Administration and Support
Phone (907) 465-3339
Date/Time 2/20/2009 17:54:00 PM
Approved by: Dwayne Peeples, Deputy Commissioner
Department of Corrections
Date 2/20/2009

(Revised 9/10/2008 OMB)

AaNA Alaska Nurses Association

Senate Bill No. 12: "Safe Nursing & Patient Care Act"

What Does *SB 12* Do?

- **Protects patients and nurses in a health care facility by limiting forced overtime unless needed for an emergency.** A health care facility cannot force a nurse to work beyond certain prescribed periods of time, or to accept an assignment of overtime if, in the judgment of the nurse, the overtime would jeopardize patient safety or employee safety.

- **Nurses cannot work more than 14 consecutive hours without 10 hours of rest**, or be forced to work more than 80 hours in a 14-day period. **Nurses can volunteer to work additional shifts beyond this limit, so long as the nurse does not work more than 14 consecutive hours without 10 hours of rest.**

- **Exceptions are allowed for unforeseen emergencies**, school nurses, medivac flights, and certain on-call situations.

Why is *SB 12* Needed?

- **Purpose of bill is to promote patient safety and better working conditions for nurses.**

- **Nurses in Alaska are working an excessive amount of overtime without adequate rest.** Nurses often work well beyond 12 consecutive hours, or come back within 2-4 hours of completing a 12-hour shift. In other cases, nurses are working several 12-hour shifts over consecutive days.

- In most cases, **this is forced or mandated through a practice called "mandatory call", which the hospitals freely admit is used.** In some cases, this is accomplished by pressure tactics designed to get nurses to "volunteer' for overtime hours. Suggestions of patient abandonment or assertions that nurses will be letting down co-workers are not uncommon.

- ***SB 12* will help with nurse recruitment and retention by prohibiting excessive amounts of overtime.** The nurse workforce is aging – a ban on excessive overtime will keep these nurses working longer.

- A recent phone survey by AaNA documents that not all of the new UA nursing school graduates are being hired. **The bill will not exacerbate the so-called shortage – there are additional graduates available to fill positions.**

- **Data suggests many hospitals are using overtime as a staffing tool.** Hospitals are not hiring all available graduates and maintain vacancy rates of between 7% to 25%. It appears that many hospitals are trying to avoid hiring Full-Time Equivalent (FTE) employees.

- 83% of the Alaska RN workforce is over 40 years of age and 53% is over the age of 50. **We need to conserve the workforce we have, and at the same time not scare away the 17% of the workforce that is under age 40**. People with young families are not going to stay in the profession if they are constantly being forced to work.

Hours of Service Limitations on Other Professions

This information is based on a review of available Internet resources. In most cases, source statutes have been researched. In some cases (e.g., truckers), litigation is pending and may result in a different hours structure.

Railroad Operations Personnel (Locomotive Engineers; Carmen; etc.)

- Federal law limits the Hours-of-Service operating trains to a maximum of 12 hours, with a requirement in most cases of 10 hours of off-duty time to follow.

U.S. Commercial Maritime Operations

- Federal law requires a minimum of 10 hours of rest in any 24-hour period.

International Seafarers' Hours of Work Convention, 1996

- 14 hours in any 24-hours period, with a minimum rest of not less than 10 hours of rest within any 24-period.

- 72 hours in any seven-day period, with minimum rest of not less than 77 hours in any seven-day period.

U.S. Commercial Pilots

- A maximum of 8 hours of flight duty time on domestic flights. It can be exceed up to an absolute maximum of 16 hours only for events beyond a carrier's control.

- A minimum of 8 hours of uninterrupted rest in the 24-hour period before finishing their flight duty.

U.S. Commercial Truckers

- Not more than 11 hours of driving during a 14-hour duty period, to be followed by a minimum of 10 hours of off-duty time.

- Other rules in flux on total allowable driving time and required amount of rest for a seven-day period.

Underground Miners in Alaska

- AS 23.10.410 establishes a limit of not more than 10 hours in a 24-hour period.

- Limited exceptions are allowed for emergencies. The commissioner of labor and workforce development may grant a variance of more than 10 hours, but not more than 12 hours if permitted under a collective bargaining agreement and it is determined to be in the best interest of resident workers.

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Mandatory Overtime Legislation: A positive approach to improved patient care for the State of Alaska

January 2008

Executive Summary

Robert Steinbrook, MD, begins his report in the New England Journal of Medicine about nurses this way: "Nursing is an embattled profession." (2002). Since the Institute of Medicine Report (IOM) in 1996 and this article in 2002, many states have taken positive steps to stop the hemorrhaging of seasoned, experienced professional registered nurses from the workforce and to add more, younger energetic people to the mix. The same can be said of other health professionals such as pharmacists, certain physician specialties, and health care professionals in general. How the states are accomplishing this is through positive legislative efforts evidencing a sincere desire for improved working conditions and health care environments.

In the nursing profession, states that have passed legislation in four main target areas are having the most success in retaining and drawing registered nurses to employment. The four legislative areas include but are not limited to: banning mandatory overtime, safe patient handling, staffing ratio systems, and increasing scholarship funds.

In this context, we will discuss the necessity of banning mandatory overtime and/or mandatory call as a first step in advancing the retention of professional registered nurses in the State of Alaska.

Background

The population in Alaska as well as the rest of the United States is aging. Registered nurses (RN's) are aging as well. In 2000, the average age of the RN was 45. Today that age is 46 and remains 95 percent female; in Alaska, the average age is 48 (2007 Alaska Senate Testimony by AaNA). At the same time, the IOM report concluded that "women are finding other choices". Dr. Steinbrook quoted Frank Sloan of Duke University and co-chair of the committee of the IOM that reported on nursing as saying, nursing "is a very stressful job with a very flat career path." Dr. Steinbrook continued by noting RN's are discontented for many reasons including inadequate levels of staffing for both nurses and support staff and excessive workloads. That discontent goes beyond the RN's according to the April 2002 report of the American Hospital Association's Commission on Workforce for Hospitals and Health Systems. That report notes, "Most health care professionals entered their profession to make a difference through personal interaction with people in need. Today many in direct patient care feel tired and burned out from a stressful, often understaffed environment, with little or no time to experience the one-on-one caring that should be the heart of hospital employment."

Linda H. Aiken of the University of Pennsylvania School of Nursing notes that, "There is a sense that nursing is becoming an impossible job, and that nurses have no control over things that are required to provide good patient care. Yet nurses are accountable for the health and welfare of their patients." Combine this feeling with an aging work force and the future looks bleak. In 2000, only 9 percent of RN's were less than 30 years of age, as

compared with 25 percent in 1980. According to Buerhaus et al in their 2000 JAMA article, by 2020 a shortage of more than 400,000 RN's is possible. The Bureau of Labor Statistics estimates that the United States will need an additional 1.1 million registered nurses by 2014.

Ann Converso, Vice-President of the UAN, when addressing the 6th International Conference on Occupational Stress and Health, March 2, 2006 noted: **"In one of the latest Institute of Medicine reports, they found that work shifts longer than twelve hours per day endanger patient safety due to fatigue, causing reduced attention span and capacity to catch errors. However, the same study found that 27 percent of full-time hospital and nursing home nurses reported working more than 13 consecutive hours one or more times per week. The IOM recommends that states prohibit nurses from working more than 12 hours in a 24 hour period or more than 60 hours per week."**

Through it all, the worst case scenario is a tired, over-extended health care professional administering care to a patient.

Statement of the Problem

In October of 2007, the Alaska Statewide Nurses Conference was held in Anchorage. Over 120 nurses attended over a three day period representing RN's from Kotzebue to Ketchikan. Every staff nurse in attendance agreed that mandatory overtime is a curtailment to the working environment. Over 50 nurses (a majority of the staff nurses present) indicated that not only have they been asked to work overtime in the past three months, many indicated they had to take mandatory call. Several nurses indicated that "not only does it mess with your family life; you really worry about patient safety when you're so exhausted." In the instance of mandatory call, the RN may or may not be called to work, but must curtail personal/family time above and beyond the normal work time just in case they're needed for work. In many cases, the callback occurs within a few hours of completing a regular-12 hour shift – resulting in working more than 14 hours within a 24-hour period. Most facilities do provide incentives for on-call pay and on-call return to work status, but it continues to remain a way to staff facilities across the state without hiring more RN's.

Upon further questioning of the staff nurses at the Statewide Conference, 100 percent indicated that mandatory overtime, if used and maintained in their workplace, would cause them to leave the profession early and/or look for employment elsewhere. Several nurses with spouses in other professions noted their spouses have time curtailments in their work areas for safety, especially pilots and truck drivers. "You'd think the same people who set those limits would worry if their grandmother was in the hospital being treated by someone who had been there for over 14 hours." one nurse said. At meetings held between AaNA members, staff, hospital managers and administrators during the fall and winter of 2007, no one could say overtime does not exist and no one could guarantee mandatory overtime or mandatory call didn't occur at times.

In her testimony to the House Ways and Means Committee in Washington, D.C., Mary Foley, President of the American Nurses Association, stated, "By far the riskiest result of understaffing is the abuse of mandatory overtime as a staffing tool" (2002). According to a study published by the American Association of Nurse Executives, 61 percent of respondent RN's said they had observed increases in overtime or double shifts during the past year (2002).

Solutions

Around the country, **California, Washington, Oregon, Missouri, Texas, Connecticut, Illinois, Maine, Minnesota, New Hampshire, New Jersey, and West Virginia have all passed legislation limiting nurses to 12 hour shifts with mandatory rest periods prior to another work time. Rhode Island's legislature just passed the same legislation on an override of a governor's veto.** New York and Pennsylvania are poised to pass the legislation this year. Congress has HR2122 and S1842 pending with the support of the United American Nurses and the American Nurses Association.

"In the long term, the future of the nursing profession is related to its ability to attract more young nurses, to support the careers of current nurses, and to create more jobs for nurses with higher wages, and greater responsibilities. Such efforts can be successful only if the positions students are training to fill are sufficiently attractive, as compared with the alternatives in other fields." (Steinbrook, 2002)

In Alaska we are on the cusp of a legislative effort to begin making a true commitment to the professional registered nurse. **The current version of Senate Bill 28 actually provides for an extended work period up to 14 hours to assist hospitals that routinely schedule nurses for 12-hour shifts. The legislation also provides for an exemption from this limitation to address legitimate, unforeseeable emergencies. The Alaska Nurses Association urges the passing of this legislation as an effort to retain nurses in the state, increase the incentives to new nurses, and most importantly assist with improved patient safety.**

AMERICAN NURSES ASSOCIATION

Mandatory Overtime

Position

ANA opposes the use of mandatory overtime as a staffing tool.

Background

Nurses report a dramatic increase in the use of mandatory overtime as a staffing tool and fear potential consequences for the safety and quality of care provided to their patients. Today, overtime (mandatory and voluntary) is the most common method facilities use to cover staffing insufficiencies. In fact, some employers have described mandatory overtime as a staffing model and have actually coined the term "mandation" to define the methodology. Many nurses contend employers insist they work an extra shift (or more) or face dismissal for insubordination and being reported to the state board of nursing for patient abandonment.

Federal regulations place limits on the amount of time that can be worked in other industries in which the work directly affects public safety (e.g., aviation and transportation). Those regulations also set requirements for defined periods of time that workers must rest or be off duty before returning to work. Health care is exempt from such overtime regulations.

A few United American Nurse bargaining units have been successful in negotiating limits on mandatory overtime. In fact, concerns about the effects of mandatory overtime were central concerns in recent strikes in Washington, D.C., Minnesota, and New York.

Rationale

The American Nurses Association (ANA) is concerned about the impact of mandatory overtime on the ability of our nation's acute care nurses to provide high-quality health care services. ANA believes that the elimination of mandatory overtime for the nation's nurses is a critical step in efforts to improve the quality of health care and reduce medical errors. Following are a few facts about the dangers of forced overtime:

- Nurses are, in general, an aging workforce. The average working nurse is slightly over 43 years of age.
- Increased reliance on mandatory overtime has occurred at the same time that patient acuity has increased, the use of sophisticated technology has increased, and the length of hospital stay has decreased.
- Research in 1977 by Dawson and Reid at the University of Australia showed that "work performance is more likely to be impaired by moderate fatigue than by alcohol consumption." Their research shows that workers staying awake for long periods pose significant safety risks.
- Sleep loss influences several aspects of performance, slowing thinking and reaction time, delaying responses, causing failure to respond when appropriate or false responses, and diminishing memory, among others.

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What will legislation regulating mandatory overtime really do?

The mandatory overtime legislation being suggested does not prohibit nurses from working overtime. It will discourage an employer from assigning mandatory overtime and will prohibit an employer from threatening or retaliating against a nurse who refuses overtime. It will support the nurse who believes patient care would be compromised if that nurse is forced to work overtime. We must be able to count on the professional nurses who are providing care to make the judgment call about whether or not they are safe to practice.

Basic Facts on Mandatory Overtime

In the United States there has been an overall increase in overtime hours for all American workers over the last two decades. Almost one third of the workforce regularly works more than 40-hours a week and one fifth work more than 50 hours. It has been no different in health care where working overtime is becoming an every day occurrence. "Time after Time: Mandatory Overtime in the US Economy" Briefing Paper. January 2002. 1

"Mandatory overtime hours" are those hours above an agreed upon, predetermined, regularly scheduled shift, that the employer makes compulsory (as opposed to voluntary) with the threat of job loss or reprisals such as discharge, discipline, demotion or assignment to unattractive tasks or work shifts or in some cases licensure removal, retaliatory reporting, and charges of "abandonment". RN schedules are often 12, 10 or 8 hour shifts and some nurses do not get overtime for staying additional time unless they have reached 40 hours in one week. For example, a RN could work their regular 8 hour shift, but then be mandated to work an additional 8 hours for a total of 16, but not qualify for overtime pay.

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1 - 18 page report available at http://www.epinet.org/briefingpapers/120/bp120.pdf

A recent study, published in July 2004, shows a strong link between medical errors and the long work hours of nurses and it has called on congress to take action on the Safe Nursing and Patient Care Act (H.R. 745, S. 373), which would strictly limit the use of mandatory overtime for nurses. 5

Ann E Rogers, Wei-Ting Hwang, Linda D. Scott, Linda H. Aiken, and David F. Dinges did an important study called, "The Working Hours Of Hospital Staff Nurses And Patient Safety", which was published in the July/August issue of Health Affairs6

This study found that the risk of making an error was three times higher when nurses had to work shifts that were longer than 12 hours, when they worked significant overtime or when they worked more than 40 hours in a week. Working overtime increased the odds of making at least one error, regardless of how long the shift was originally scheduled. Fatigue related to working overtime was identified as the cause of approximately 12% of the absences reported by a random sample of Canadian staff nurses.

This reported outcome reinforced the findings of the 2003 Institute of Medicine Report, "Keeping Patients Safe: Transforming the Work Environment of Nurses" (7), which also said that nurses' long working hours pose a serious threat to patient safety.

...And Because We Are Loosing Nurses

Mandatory overtime is one of the main reasons nurses leave nursing. Recent studies indicate that one in five nurses are considering leaving nursing. When polled on their reasons for leaving, mandatory overtime is always listed in the top ten reasons. In the face of a severe nursing shortage, we need to keep nurses at the bedside.

Surveys have shown that the exodus of registered nurses, therapists, technologists, technicians and service and maintenance workers is directly attributable to difficult working conditions, including inadequate staffing, mandatory overtime and insufficient compensation. This is not expected to improve over the next decade because as well as leaving the bedside, much fewer numbers of people are looking to nursing as a career.

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5 Safe Nursing and Patient Care Act of 2003 (Introduced in Senate) [S.373.IS]
Safe Nursing and Patient Care Act of 2003 (Introduced in House)[H.R.745.IH]
http://thomas.loc.gov/cgi-bin/thomas

6 . Available for purchase at http://www.healthaffairs.org/ .

7 http://www.iom.edu/project.asp?id=4671

Retaliation by Employers

Nurses do suffer retaliation from employers for refusing to accept overtime hours. There are reports from all over the country. According to a report, The Minnesota Nurses Association has documented complaints from nurses who were threatened by their employer. These nurses were told that if they would not work additional shifts, they would be reported to the State Board of Nursing for "patient abandonment". While the Board does not view the refusal to accept additional shifts because of fatigue as "patient abandonment", the fear of such a complaint often compels nurses to work against their better judgment. Another form of retaliation is more direct and involves simply firing or suspending the nurse who refuses overtime. In this situation, the nurse is forced to choose between their ethical obligation to the patient to provide quality care and their livelihood. This is a choice that nurses should not have to make.

What is this term ABANDONMENT?

According to the New Jersey Board of Nursing, the term "patient abandonment" should be differentiated from the term "employment abandonment," which becomes a matter of the employer-employee relationship and not that of the Board of Nursing. It should be noted that from a regulatory perspective, in order for patient abandonment to occur, the nurse must have first accepted the patient assignment and established a nurse-patient relationship, then severed that nurse-patient relationship without giving reasonable notice to the appropriate person (supervisor, employer) so that arrangements can be made for continuation of nursing care by others. Providing appropriate nursing personnel to care for patients is the responsibility of the employer. Failure of a nurse to work beyond his/her scheduled shift, refusal to accept an assignment, refusal to float to another unit, refusal to report to work, and resigning without notice are examples of employment issues and not considered by the New Jersey Board to constitute patient abandonment.

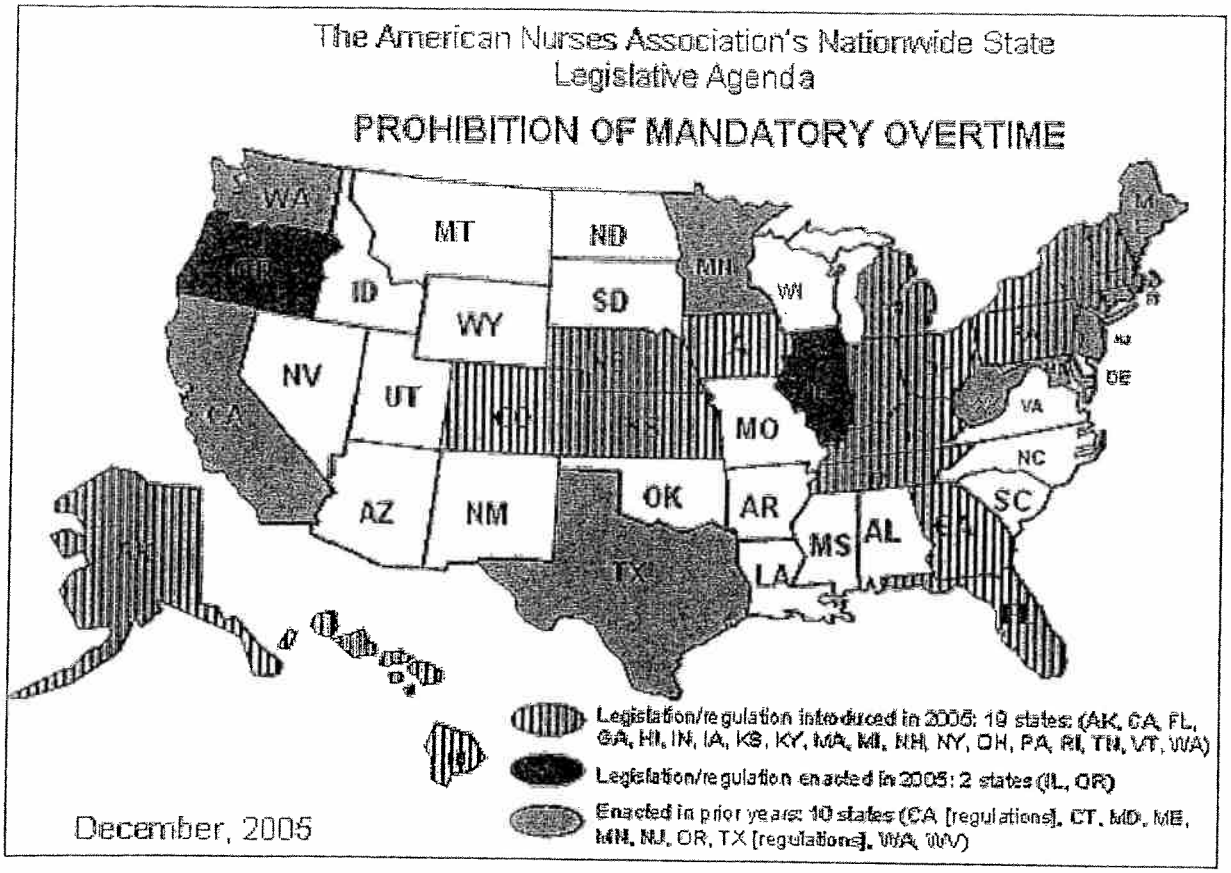
What are other states doing?

In 2003, three states, LA, NV and WV enacted legislation requiring the establishment of study committees to further explore the issue. 22 other states introduced prohibition of mandatory overtime legislation/regulation designed to set maximum hours of work per day/week with protected right of refusal for work time requested in excess of predetermined maximums.

Approximately 28+ states have completed or initiated steps toward legislation to restrict mandatory overtime for RNs, LPNs and, in some cases, all health care workers. In 2004, WV enacted legislation prohibiting a hospital from mandating a nurse to accept an assignment of overtime. CT enacted legislation that prohibits a hospital from requiring a nurse to work in excess of a predetermined scheduled work shift except in certain circumstances (emergency etc). Legislation was also introduced in FL, GA, HI, IA, IL, MA, MI, MO, NY, OH, PA, RI, TN, VT, and WA.

ANA State Government Relations

2005 Legislation: Mandatory Overtime (updated 12/05)



Background: Mandatory Overtime

Mandatory overtime is a difficult problem for RNs and health care facilities. Because of inadequate RN staffing, employers have used mandatory overtime to staff facilities often as a cost savings factor. Nurses are concerned about the health effects of long term overtime and the quality of care being provided. Research indicates that risks of making an error were significantly increased when work shifts were longer than 12 hours, when nurses worked overtime, or when they worked more than 40 hours per week[1].

As part of the American Nurses Association's (ANA) Nationwide State Legislative Agenda on the nurse staffing crisis, State Nurses Associations support the enactment of mandatory overtime legislation in state legislatures and regulatory agencies. ANA is also pursuing the enactment of federal legislation to prohibit mandatory overtime. The Safe Nursing and Patient Care Act of 2005 (HR

not to exceed 40 hours per week. **TX** regulations require hospitals to develop policy and procedures for mandatory overtime. **WA**'s new language states that acceptance of mandatory overtime by a nurse is strictly voluntary and refusal is not grounds for adverse actions against the nurse.

Legislation enacted in 2001 in **ME** would prevent a nurse from being disciplined for refusing to work more than 12 consecutive hours except in certain circumstances and must be given 10 consecutive hours off following overtime. **OR** enacted legislation prevents a nurse from being required to work more than 2 hours beyond a regularly scheduled shift or 16 hours in a 24 hour time period. Regulations adopted in **CA** prior to 2001 prevent an employee scheduled to work a 12 hour shift from working more than 12 hours in a 24 hour period except in a health care emergency.

[1] Rogers A, et al. The working hours of hospital staff nurses and patient safety. *Health Affairs* 2004;23(4):202-12.

Return to ANA 2005 State Legislative Trends Report

References

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Mandatory Overtime

A Statement from The American Association of Critical-Care Nurses (AACN)

BACKGROUND

Mandatory overtime is identified as a workplace issue and a patient safety issue. Mandatory overtime is the practice of hospitals and health care institutions to maintain adequate numbers of staff nurses through forced overtime, usually with a total of twelve to sixteen hours worked, with as little as one hour's notice. With mandatory overtime nurses are unable to refuse the required extra hours due to 1) fatigue, or 2) feeling that she/he would be unable to deliver adequate, safe patient care. This does not include overtime mandated in an unforeseen emergency, such as a mass casualty situation, or a sudden snowstorm. "On call" time is not included in this definition, unless the nurse's on call time is immediately before or after a scheduled shift, and it would force him or her to work a double shift.

THE ISSUE

The dramatic changes in the health care environment that have impacted nursing practice in recent years have come as managed care programs grew in dominance and federal Medicare and Medicaid reimbursements declined (Berens, M.J.). With the nursing shortage continuing, the growing trend is for hospitals to use mandatory overtime as a common staffing practice (ANA, June 2000).

Mandatory overtime may cause or lead to increased stress on the job, less patient comfort and mental and physical fatigue that can contribute to errors and "near-misses" with medications and case-related procedures. This is occurring as patient acuity has increased. The practice of mandatory overtime ignores the responsibilities nurses may have at home with children, other family members, or other obligations. Being forced into excessive overtime can cause an exhausted

a lower incidence of needlestick injuries among nurses was also noted. If mandatory overtime is allowed to continue, one could easily project:

1) Increase in medication errors,
2) Decrease in safe, quality patient care,
3) Decrease in patient satisfaction,
4) Increase in hospital length of stay,
5) Increase in mortality and morbidity,
6) Decrease in recruitment of new nurses,
7) Decrease in retention of nurses, and
8) Increase in legal liability issues against nurses.

LEGISLATIVE HISTORY

February 12, 2003 - Senator Edward M Kennedy re-introduced **S. 373, the Safe Nursing and Patient Care Act of 2003**, which amends title XVIII of the Social Security Act to provide for patient protection by limiting the number of mandatory overtime hours a nurse may be required to work in certain providers of services to which payments are made under the Medicare program. A companion bill, H.R. 745 was again re-introduced in the House by Representative Pete Stark. The bills are currently in committee.

November 14, 2001- Senator Edward M Kennedy, introduced **S. 1686 "The Safe Nursing and Patient Care Act of 2001"** which was referred to the Committee on Finance. The bill would amend title XVIII of the Social Security Act to provide for patient protection by limiting the number of mandatory overtime hours a nurse may be required to work in certain providers of services to which payments are made under the Medicare Program. and referred to the House Committee on Education and the Workforce and to the Subcommittee on Workforce Protections.

September 15, 2000- H.R. 5179 "The Registered Nurses and Patients Protection Act" was introduced into the U.S. House of Representatives by Rep.Tom Lantos (D-Calif.). The bill would amend the Fair Labor Standards Act so that no RN would be required to work beyond eight hours in any workday or 80 hours in any 14-day work period. This legislation was not acted on in the 106th Congress and Lantos reintroduced the bill **(H.R. 1289)** in the 107th Congress where it was referred to the House Committee on Education and the Workforce and to the Subcommittee on Workforce Protections.

AACN's POSITION

AACN believes that mandatory overtime is not an acceptable means of staffing a hospital, because it may place nurses and their patients at increased risk of being involved in medical errors. Instead, nurses should be able to decide whether working overtime will affect their ability to care safely and effectively for patients. They should have the option of refusing overtime assignments and not be forced into working beyond their capacity to provide optimal care. AACN supports this legislation and will continue to work to educate the public on the negative impact that mandatory overtime can have on patient safety.

RN to practice unsafe patient care, jeopardizing her nursing licensure status. Impact is felt at the level of the bedside nurse in three major areas identified through current literature: medication errors, quality patient care, and nurses' legal liability.

Medication Errors - The Institute of Medicine's report *To Err is Human: Building a Safer Health System* (IOM, 12/1999) states the deaths from medication errors that take place both in and out of hospitals, more than 7000 annually, exceed those from workplace injuries. In a separate report, investigation by the Chicago-Tribune states that since 1995, at least 1,720 hospital patients have died and 9,548 others have been injured because of mistakes made by RN's across the country (Associated Press, 9/10/2000).

Quality Patient Care - As the nurse-to-patient ratio worsens, and as patient acuity increases, hospital management is free to demand that nurses work mandatory sixteen-hour shifts, with one-hour notice (MNA, 4/3/2000). In a 1989 article published in the Journal of Occupational Health and Safety, the author stated, "Once a shift exceeds twelve consecutive hours, acute fatigue sets in. A worker may still be able to perform routine tasks, but his brain waves exhibit a pattern of stage one alpha sleep. Errors made in this stage are frequently major, since the worker tends to perform the opposite of the correct action."

Legal Liability - Nurses practice under each state's Nurse Practice Act, which govern nursing practice. Most nurse practice acts state that nurses are held accountable for the safety of their patients. Thus, if a nurse accepts a patient assignment and something untoward happens to that patient, the nurse is liabl under her license. Once a nurse accepts an assignment, her license can be in jeopardy if she is unable to deliver safe patient care.

Implications of Change - If mandatory overtime is legally banned in all states, hospitals and health care institutions will have to look at real remedies for understaffed facilities such as:
1) Hiring more RN's, and
2) Utilizing strategies to recruit and retain more nurses.

ANA's recent study, *Nurse Staffing and Patient Outcomes in the Inpatient Hospital Setting* (3/2000), tracks five adverse outcomes measures that can be mitigated if adequate patient staffing is provided: hospital length of stay, nosocomial pneumonia, postoperative infections, pressure ulcers, and nosocomial urinary tract infections. With sufficient nurse staffing, time is available for more thorough patient assessment and interventions to improve outcomes.

The American Academy of Nursing (AAN) conducted research in the 80's, which has had several follow-up studies since, which reinforce the original findings of researcher Linda Aiken. Her research affirmed that specific organizational variables create a milieu that not only attracts nurses, but also create practice environments that provide better outcomes for patients. "Magnet facilities" have higher nurse-staffing levels, and lower mortality and morbidity rates, shorter length of stay, and lower utilization of ICU days. In the 1999 follow-up research,

WHAT YOU CAN DO

Work with the administrators in your facility to develop systems that support the delivery of quality care and a safe work environment.

Let your legislators know that this bill has strong support of nurses. Discuss with him or her:

Your concern that mandatory overtime is not an acceptable means of staffing a hospital because it can place nurses and their patients at increased risk for making errors.

The fact that studies have shown that when a worker (especially a health care worker) exceeds 12 hours of work, and is fatigued, the likelihood of their making an error increases. The IOM report on medication errors substantiates these findings, where the experts who compiled the report specifically recommended that safe staffing and limits on mandatory overtime are a component to preventing medication errors.

Explain RN accountability for the delivery of safe care and that nurses should not be forced into working beyond his or her capacity to provide optimal care without the right to refuse that assignment.

3/01
Revised 3/03

American Association of Critical-Care Nurses
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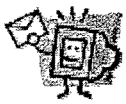

Last Update: 02/26/2004

JAMA study: High RN workloads impact mortality

Nurse researchers add more evidence to growing body of work on nurse staffing

In a new study looking at nursing care, University of Pennsylvania (Penn) researchers have determined that patients who have common surgeries in hospitals with the worst nurse staffing levels have up to a 31 percent increased chance of dying. Further, more nurses at the bedside could save thousands of patients' lives every year, report researchers in the Oct. 23-30 issue of the Journal of the *American Medical Association (JAMA).*

The researchers found that every additional patient in a hospital nurse's average workload increased the risk of death in surgical patients by seven percent. Patients with life-threatening complications also were less likely to be rescued in hospitals where nurses' patient loads were heavier.

"Nurses reported greater job dissatisfaction and emotional exhaustion when they're responsible for more patients that they can safely care for," said Pennsylvania State Nurses Association member Linda Aiken, PhD, RN, FAAN, director of the Center for Heath Outcomes and Policy Research at Penn's School of Nursing. Aiken, along with colleagues, conducted the study. "Failure to retain nurses contributes to avoidable patient deaths."

ANA President Barbara Blakeney, MS, APRN,BC, ANP, said: "This new study is dramatic because it highlights the fact that people can die when nursing care is inadequate. It is an important contribution, but frankly, this is something that nurses have known for years. Nurses make the critical, cost-effective difference in providing safe, high quality patient care."

Specifically, the Penn nursing researchers found that:

* If all hospitals in the nation staffed at eight patients per nurse rather than four, the risk of hospital deaths would increase by 31 percent, roughly translating to as many as 20,000 avoidable deaths in the United States annually.

* Having too few nurses may actually cost more because of the high costs of replacing burned-out nurses and the higher cost of caring for patients with poor outcomes.

* Adding two patients to a nurse already caring for four increases the risk of death by 14 percent.

The report, "Hospital Nurse Staff and Patient Mortality, Nurse Burnout and Job Dissatisfaction," concluded that, "When taken together, the impacts of staffing on patient and nurse outcomes suggest that by investing in registered nurse staffing, hospitals may avert both preventable mortality and ... problems with low nurse retention in hospital practice."

The study, funded by the National Institute of Nursing Research of the National Institutes of Health, examined data collected from 168 hospitals, 232,342 surgical patients, and 10,184 nurses in Pennsylvania from 1998 to 1999. They examined data on relatively common, general, orthopedic surgeries and vascular surgeries, excluding cardiac operations such as coronary bypass.

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ANA Press Release October 23, 2002

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JAMA Article Links Hospital Staffing and Patient Mortality, Nurse Burnout and Job Dissatisfaction

ANA's Blakeney calls on hospitals to utilize Principles for Nurse Staffing to address problem

Washington, DC -- A study published today in the Journal of the American Medical Association (JAMA) found that Registered Nurse (RN) staffing levels have a significant effect on preventable hospital deaths among surgical patients. According to researchers, the odds of patient mortality rose 7 percent for every additional patient added to the average nurses's workload. The difference between four to six and four to eight patients-per-nurse was accompanied by a 14 percent and 31 percent increase in mortality respectively. The study from the University of Pennsylvania affirms the critical role RNs play in patient safety when able to make direct assessments and life-saving interventions.

"This new study is dramatic because it highlights the fact that people can die when nursing care is inadequate," said Barbara A. Blakeney, MS, APRN,BC, ANP, president of the American Nurses Association (ANA). "It is an important contribution, but, frankly, this is something that nurses have known for years," she said. "Nurses make the critical, cost-effective difference in providing safe, high-quality patient care," she added. Blakeney pointed to ANA's own report, Nurse Staffing and Patient Outcomes in the Inpatient Hospital Setting," which was released in May 2000. The study looked at hospital and Medicare data in nine states in five categories of adverse outcomes: length of hospital stay, hospital-acquired pneumonia, postoperative infection, bed sores and hospital-acquired urinary tract infections. All five measures were markedly lower with higher levels of RN involvement in patient care. Two other studies published this year, one in the New England Journal of Medicine and one by the Joint Commission on the Accreditation of Healthcare Organizations (JCAHO), also found direct links between nurse staffing levels and better patient outcomes.

Today's JAMA article also reported that patient load had a direct impact on nurse retention rates. Adding one patient-per-nurse to a hospital's staffing level increased nurse burnout by 23 percent and job dissatisfaction by 15 percent. The data indicate that more than 40 percent of nurses who reported high burnout and job dissatisfaction intended to leave their job within the next year.

"Inappropriate staffing is the number one concern of nurses today," Blakeney said. "Nurses already face great stress and challenges on the job. They must care for greater numbers of patients than ever before and patients in hospitals are more acutely ill than in the past. Adequate nurse staffing is critical to the delivery of quality patient care because it allows nurses time for appropriate assessment of patients and their needs and initiation of suitable interventions."

Blakeney emphasized that nurses are dissatisfied because of a lack of control over their work environment which prevents them from delivering high-quality nursing care. In addition to the

right number and mix of direct-care staff for hands-on care, other resources are necessary to support RNs' ability to deliver the best possible care. ANA has developed and strongly encourages the use of its Principles for Nurse Staffing, which include: nurse control over the practice environment; effective and efficient support services; readily available and current patient information; sufficient orientation and mentoring for new staff and new nursing graduates; education in the use of new technology; and sufficient time for collaboration, planning, coordination and delivery of care that meets both patient and family needs. Research has shown that hospitals which incorporate much of the philosophy embedded in the Principles for Nurse Staffing into their organizational culture and practice have higher rates of satisfaction and retention among nursing staff, and better outcomes for patients.

ANA is advocating for a comprehensive set of strategies to address the nurse staffing crisis, including state and federal legislation that would limit mandatory overtime, provide whistle-blower protections for nurses, mandate collection of workforce and nursing-sensitive quality data, establish patient staffing systems and provide funding for nursing education.

In addition, hospitals that utilize nursing "best practices" can apply for designation as "Magnet" facilities a recognition made by the American Nurses Credentialing Center, a subsidiary of ANA. Hospitals that have achieved "Magnet"status have higher retention rates for nurses and improved patient outcomes.

Many of the issues touched on in the JAMA study have been addressed in Nursing's Agenda for the Future (www.NursingWorld.org/naf). The plan, which was released in April, is the result of an in-depth strategic planning process that involved leaders from more than 60 national nursing organizations. It reflects the brain trust of nursing and includes strategies to address basic issues, such as recruitment, as well as more complex issues, such as the economic value of nursing.

The authors of the new JAMA study said that improving nurse staffing may not only save patient lives and decrease nurse turnover but also reduce hospital costs, if recently published estimates of the costs of replacing a hospital medical and surgical general unit and a specialty nurse ($42,000 to $64,000) are correct.

"Hospital Nurse Staffing and Patient Mortality, Nurse Burnout, and Job Dissatisfaction," by Linda H. Aiken, et. al, appears in the October 23/30, 2002 issue of JAMA. The study, funded by the National Institute of Nursing Research of the National Institutes of Health, looked at 232,342 patients between the ages of 20 and 85 who underwent general surgical, orthopaedic, or vascular procedures in 168 Pennsylvania hospitals from April 1, 1998, to Nov. 30, 1999.

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ANA is the only full-service professional organization representing the nation's 2.7 million Registered Nurses through its 54 constituent associations. ANA advances the nursing profession by fostering high standards of nursing practice, promoting the economic and general welfare of nurses in the workplace, projecting a positive and realistic view of nursing, and by lobbying the Congress and regulatory agencies on health care issues affecting nurses and the public.

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SPECIAL ARTICLE

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Nurse-Staffing Levels and the Quality of Care in Hospitals

Jack Needleman, Ph.D., Peter Buerhaus, Ph.D., R.N., Soeren Mattke, M.D., M.P.H., Maureen Stewart, B.A., and Katya Zelevinsky

ABSTRACT

Background It is uncertain whether lower levels of staffing by nurses at hospitals are associated with an increased risk that patients will have complications or die.

Methods We used administrative data from 1997 for 799 hospitals in 11 states (covering 5,075,969 discharges of medical patients and 1,104,659 discharges of surgical patients) to examine the relation between the amount of care provided by nurses at the hospital and patients' outcomes. We conducted regression analyses in which we controlled for patients' risk of adverse outcomes, differences in the nursing care needed for each hospital's patients, and other variables.

Results The mean number of hours of nursing care per patient-day was 11.4, of which 7.8 hours were provided by registered nurses, 1.2 hours by licensed practical nurses, and 2.4 hours by nurses' aides. Among medical patients, a higher proportion of hours of care per day provided by registered nurses and a greater absolute number of hours of care per day provided by registered nurses were associated with a shorter length of stay ($P=0.01$ and $P<0.001$, respectively) and lower rates of both urinary tract infections ($P<0.001$ and $P=0.003$, respectively) and upper gastrointestinal bleeding ($P=0.03$ and $P=0.007$, respectively). A higher proportion of hours of care provided by registered nurses was also associated with lower rates of pneumonia ($P=0.001$), shock or cardiac arrest ($P=0.007$), and "failure to rescue," which was defined as death from pneumonia, shock or cardiac arrest, upper gastrointestinal bleeding, sepsis, or deep venous thrombosis ($P=0.05$). Among surgical patients, a higher proportion of care provided by registered nurses was associated with lower rates of urinary tract infections ($P=0.04$), and a greater number of hours of care per day provided by registered nurses was associated with lower rates of "failure to rescue" ($P=0.008$). We found no associations between increased levels of staffing by registered nurses and the rate of in-hospital death or between increased staffing by licensed practical nurses or nurses' aides and the rate of adverse outcomes.

Conclusions A higher proportion of hours of nursing care provided by registered nurses and a greater number of hours of care by registered nurses per day are associated with better care for hospitalized patients.

Source Information

From the Department of Health Policy and Management, Harvard School of Public Health, Boston (J.N., S.M., M.S., K.Z.); the Vanderbilt University School of Nursing, Nashville (P.B.); and Abt Associates, Cambridge, Mass. (S.M.).

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Nurses' Solutions to the Nurse Staffing Shortage
UAN National Sample Survey of Staff RNs

Key Findings and Talking Points for CMAs

The United American Nurses has conducted a national poll exclusively of hospital staff RNs on the front lines of direct patient care to spotlight their experience and expertise about the critical staffing shortage and how to solve it.

Lake Snell Perry and Associates, a leading national political and public policy research firm, designed and administered this survey which was conducted by phone using professional interviewers in November 2002. The survey reached 600 licensed hospital staff nurses who provide direct patient care.

1. **Problems in today's hospitals**

The nursing shortage is the top problem in hospitals today. Eight of ten nurses feel there is a serious shortage in their hospital.

When asked about the two biggest problems facing them, nurses identify the staffing shortage and inadequate wages as top concerns.

Other problems include:
Workload issues
Nurse to patient ratios
Stress and fatigue
Lack of respect and recognition
Long hours
Support from the administration
Quality of patient care
Turnover rate and retaining nurses

Time for patient care has decreased, according two-thirds of those surveyed (67%), and nearly four in ten nurses (38%) say less than half their day is spent on direct patient care. 31% say administrative reports and documentation take more than half their day.

2. **Why nurses leave the profession.**

Work-related stress, patient load, and inadequate pay are the top three reasons nurses leave the profession.
Three out of ten nurses say it's unlikely they will be a hospital staff nurse in five years.
The majority of nurses surveyed feel their hospital is doing only a fair to poor job attracting and retaining nurses.

3. **Solutions to the Nursing Shortage**

The best solutions are:
Increased pay (82%),
Reduced nurse patient ratios (85%)

Collectively, staff nurses have a lot of experience. Over a third (35%) have worked as a staff nurse for more than 20 years and 65% have more than 10 years experience. Only 12% have 5 years or less experience. The other side of that coin is that the lower percentages of less experienced nurses reflects fewer people entering the nursing profession now and foreshadows future shortages.

An overwhelming number (86%) say they would be confident having someone close to them receive care at the hospital in which they work. The fact that one of every ten (13%) said they would not is a strong reminder that patients need to choose hospitals carefully.

When asked about how good a place to work their hospital is, just over half (52%) said it was too good a place to work to leave. However, four out of ten (41%) said their hospital isn't a great place to work, but they probably would not leave and 5% said it was so bad a place to work that they definitely intend to leave.

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