



Alaska State Legislature

Representative Peggy Wilson
House District 2

MEMORANDUM

Date: March 30, 2009

To: Representative Bob Herron and Representative Wes Keller, Co-Chairs Health,
and Social Services Committee

From: Representative Peggy Wilson *PW*

Re: HB 50 – Limit Overtime for Registered Nurses

I would like to request the House HSS Committee schedule another hearing on HB 50.

During the first hearing of this bill in the House Health and Social Services there was testimony that brought up several issues. The attached revision of the bill addresses those issues. This memo will outline the changes made to the bill and the issue it is designed to mitigate.

1. **Concern:** Rural hospitals may face more difficulty than urban facilities in complying with the requirement to not exceed the shift length maximum of 14 hours or to allow 10 hours of rest following such a shift. Witnesses in opposition testified that generally hospitals don't use mandatory overtime, but the concern was raised that in certain circumstances in remote rural facilities, mandatory overtime was occasionally necessary.

Mitigation 1: A new exemption has been added, called "Temporary nurse staffing emergency" for rural communities. Under this provision, facilities may declare a "temporary nurse staffing emergency" of up to 30 days after making all reasonable efforts to avoid this circumstance. These facilities shall file a report signed by the facility administrator with the Department of Labor & Workforce Development that describes the facilities' efforts to avoid the staffing emergency. The reports must also be filed with the Legislature if there are more than two such emergencies declared within 6 months or 3 emergencies within 1 year. (pg 4, Sec. 18.20.410)



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Mitigation 2: An exemption for "unforeseen weather condition" and a definition of that condition were added. (pg 3, line 12-19)

Mitigation 3: The temporary exemption described above is available to any village or city with a population of less than 10,000. This exemption also applies to communities in organized boroughs with a population of more than 25,000. (pg 7, line 30-31, pg 8 line 1-5)

2. **Concern:** Because of the 14 hour maximum for a shift there seemed to be a concern, from multiple witnesses testifying in opposition to the bill, that nurses would be forced to leave surgical units with ongoing surgeries or leaving neonatal units without the specially trained nurses in attendance. This was never the intent of the proponents of this bill.

Mitigation 1: An exemption for a nurse who is participating in an on-going surgery or medical procedure has been added. (pg 3, line 2-3)

Mitigation 2: The exemption for unforeseen emergency situation has been expanded to include "a life-threatening circumstance". (pg 3, line 7)

3. **Concern:** The committee heard testimony describing a situation where a modified Baylor program of staffing is used by North Star Behavioral Health. This staffing situation is used only at psychiatric hospitals and residential treatment centers that treat adolescents and children and only on the weekends.

Mitigation: This specific practice has been exempted. (pg 3, line 23-25)

4. **Concern:** During testimony by both those opposed and those in favor it was brought out that mandatory on-call was used more frequently as a staffing tool than mandatory overtime. This practice often requires nurses to work beyond the number of hours that are safe for both the patient and the nurse.

Mitigation: Language has been added to the general on-call exemption allowing nurses the ability to refuse mandatory on-call if they believe they are too tired to perform their duties safely. (pg 3, line 23-25)



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I have also made other changes described below.

Facilities will be required to post signs that describe the statutes created by this bill. The signs will be distributed by the Department of Labor and must be displayed in a conspicuous work area in all facilities. (pg 7, line 4-9)

The 1 hour exemption while the health care facility is obtaining another nurse to work in place of the nurse in overtime status has been extended to 2 hours so long as the nurse has not exceeded the 14 hour limit. In some cases nurses live some distance from the facility and I believe this extension of the provision gives the facility more flexibility. (pg 4, line 11)

Thank you for your consideration of my request.

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Wayne

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CS FOR HOUSE BILL NO. 50()**IN THE LEGISLATURE OF THE STATE OF ALASKA****TWENTY-SIXTH LEGISLATURE - SECOND SESSION****BY****Offered:****Referred:****Sponsor(s): REPRESENTATIVES WILSON, GARA, TUCK, PETERSEN, LYNN, SEATON, GATTO,
CISSNA, MUÑOZ, AND GARDNER, Ramras, Foster, Kerttula****A BILL****FOR AN ACT ENTITLED**

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

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

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

6 **LEGISLATIVE FINDINGS AND INTENT.** The legislature finds that

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

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

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

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

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

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

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

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

9 **Article 4. Overtime Limitations for Nurses.**

10 **Sec. 18.20.400. Limitations on nursing overtime.** (a) Except as provided in

11 (c) of this section, a nurse in a health care facility may not be required or coerced,
12 directly or indirectly,

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

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

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

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

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

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

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

1 (3) a nurse on duty in overtime status

2 (A) who is participating in the performance of a medical
3 procedure or surgery that has begun but has not been completed;

4 (B) because of an unforeseen emergency situation that could
5 jeopardize patient safety; in this subparagraph, "unforeseen emergency
6 situation" means an unusual, unpredictable, or unforeseen situation caused by
7 an act of terrorism, disease outbreak, life-threatening circumstance, natural
8 disaster, major disaster as defined in 42 U.S.C. 5122, or disaster emergency
9 under AS 26.23.020 or 26.23.140, but does not include a situation in which a
10 health care facility has reasonable knowledge of increased patient volume or
11 inadequate staffing because of some other cause, if that cause is foreseeable;

12 (C) because the health care facility has a scheduling problem
13 caused by unforeseen weather conditions that prevent a second nurse from
14 arriving at the facility to relieve the nurse on duty; in this subparagraph,
15 "unforeseen weather conditions" means unusual, unpredictable, or unforeseen
16 weather so extreme as to impair travel to the health care facility, but does not
17 include a situation in which the health care facility has knowledge of the
18 weather conditions far enough in advance to act so that a scheduling problem
19 under this subparagraph can reasonably be avoided; or

20 (D) at a health care facility located in a rural community that
21 declares a temporary nurse staffing emergency under AS 18.20.410;

22 (4) a nurse fulfilling on-call time that is agreed on by the nurse and a
23 health care facility before it is scheduled unless fulfilling the on-call time would, in the
24 nurse's judgment, create an unacceptable risk to the physical safety of the nurse, a
25 patient, or an employee of the facility;

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

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

(7) a nurse at a psychiatric treatment hospital that treats only adolescents and children or a residential psychiatric treatment center under AS 18.07.111 or AS 47.12.990, or a secure residential psychiatric treatment center under AS 47.32.900 who voluntarily agrees to work a 16-hour shift on a weekend and receives pay and benefits for that work that are equal to or greater than the pay and benefits the nurse would receive for working 20 regular hours in the same position; a nurse under this paragraph may not work a 16-hour shift consecutive with another shift of eight hours or more without an intervening break of at least eight hours; in this paragraph, "weekend" means the period between 5:00 p.m. on a Friday and 8:00 a.m. on the Monday that immediately follows;

(8) the first two hours on overtime status when the health care facility is obtaining another nurse to work in place of the nurse in overtime status, so long as the nurse in overtime status is not on duty for more than 14 consecutive hours.

Sec. 18.20.410. Temporary nurse staffing emergency. (a) If, after making a substantial and reasonable effort to increase the number of available nurses on staff and failing in that effort, a health care facility in a rural community determines it is not able to meet the overtime limitations in AS 18.20.400 without putting the safety of its patients at risk of serious harm, the health care facility may declare a temporary nurse staffing emergency. A declaration of a temporary nurse staffing emergency under this section

(1) must be made in a writing, signed by the administrator of the health care facility or the administrator's designee, that describes the facility's reasonable effort to avoid the temporary nurse staffing emergency; and

(2) may not exceed 30 days.

(b) Immediately after declaring a temporary nurse staffing emergency under (a) of this section, a health care facility shall file with the division of labor standards and safety, Department of Labor and Workforce Development, a report that includes a copy of the signed writing required under (a) of this section. A report under this subsection is a public document.

(c) In addition to the requirements of (a) and (b) of this section, a health care facility shall notify the legislature immediately by delivery of a written report to the

1 Alaska Legislative Council each time the facility declares a temporary nurse staffing
2 emergency under AS 18.20.400(c) that exceeds two occurrences in a six-month period
3 that begins on January 1 or July 1 of the year in which the declaration occurs, or three
4 occurrences in the one-year period that begins on January 1 of that year. A report
5 under this subsection must include a copy of each report that is required of the health
6 care facility under (b) of this section for the one-year period that begins on January 1
7 of the year the excessive declaration under this subsection occurs.

8 **Sec. 18.20.420. Health care facility complaint process for overtime work**
9 **by nurses.** A health care facility shall provide for an anonymous process by which a
10 patient or a nurse may make a complaint about staffing levels and patient safety that
11 relate to overtime work by nurses and to limitations on overtime work by nurses under
12 AS 18.20.400.

13 **Sec. 18.20.430. Enforcement, offenses, and penalties.** (a) The commissioner
14 shall administer AS 18.20.400 - 18.20.469 and adopt regulations for implementing and
15 enforcing AS 18.20.400 - 18.20.469.

16 (b) A complaint alleging a violation of AS 18.20.400 - 18.20.469 must be filed
17 with the commissioner within 30 days after the date of the alleged violation. The
18 commissioner shall provide a copy of the complaint to the health care facility named
19 in the filing within three business days after receiving the complaint.

20 (c) If the commissioner finds that a health care facility has knowingly violated
21 an overtime provision of AS 18.20.400 - 18.20.469, the following civil penalties shall
22 apply:

23 (1) for a first violation of AS 18.20.400 - 18.20.469, the commissioner
24 shall reprimand the health care facility;

25 (2) for a second violation of AS 18.20.400 - 18.20.469 within 12
26 months, the commissioner shall reprimand the health care facility and assess a penalty
27 of \$500;

28 (3) for a third violation of AS 18.20.400 - 18.20.469 within 12 months,
29 the commissioner shall reprimand the health care facility and assess a penalty of not
30 less than \$2,500 but not more than \$5,000;

31 (4) for each violation of AS 18.20.400 - 18.20.469 after a third

1 violation of AS 18.20.400 - 18.20.469 within 12 months, the commissioner shall
2 reprimand the health care facility and assess a penalty of not less than \$5,000 but not
3 more than \$25,000.

4 (d) As an employer, a health care facility violates an overtime provision of
5 AS 18.20.400 - 18.20.469 "knowingly" when the facility is either aware that its
6 conduct is of a nature prohibited by the overtime provision or aware that the
7 circumstances described in the overtime prohibition exist; however, when knowledge
8 of the existence of a particular fact is required to establish that the violation was
9 knowing, that knowledge exists when the facility is aware of a substantial probability
10 of its existence, unless the facility reasonably believes it does not exist.

11 **Sec. 18.20.440. Prohibition of retaliation.** A health care facility may not
12 discharge, discipline, threaten, discriminate against, penalize, or file a report with the
13 Board of Nursing against a nurse for exercising rights under AS 18.20.400 - 18.20.469
14 or for the good faith reporting of an alleged violation of AS 18.20.400 - 18.20.469.

15 **Sec. 18.20.450. Enforcement of prohibition against retaliation.** The
16 commissioner shall investigate every complaint alleging a violation of AS 18.20.440,
17 and, within 90 days after the date of filing of the complaint, provide to the
18 complainant, the Department of Law, and the health care facility named in the
19 complaint a written determination as to whether the health care facility violated
20 AS 18.20.440. If the commissioner finds a violation of AS 18.20.440, the
21 commissioner shall request that the Department of Law represent the department and
22 the complainant and obtain from the health care facility all appropriate relief,
23 including rehiring or reinstatement of the complainant to the complainant's former
24 position with back pay.

25 **Sec. 18.20.460. Report requirements.** A health care facility shall file with the
26 division of labor standards and safety, Department of Labor and Workforce
27 Development, a semiannual report. The report for the six-month period ending June 30
28 must be filed before the following August 1, and the report for the six-month period
29 ending December 31 must be filed before the following February 1. The report must
30 include, for each nurse employed by the health care facility or under contract with the
31 health care facility, the number of overtime hours worked, the number of overtime

1 hours that were mandatory, the number of overtime hours that were voluntary, the
2 number of on-call hours, the number of on-call hours that were mandatory, and the
3 number of on-call hours that were voluntary.

4 **Sec. 18.20.465. Notice to employees.** A health care facility shall post and
5 maintain, in places readily accessible to individuals in the service of the health care
6 facility, printed statements that describe employee rights and employer obligations
7 under AS 18.20.400 - 18.20.469 and regulations adopted under AS 18.20.430. The
8 commissioner shall supply the printed statements to a health care facility without cost
9 to the facility.

10 **Sec. 18.20.469. Definitions.** In AS 18.20.400 - 18.20.469,

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

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

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

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

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

30 (6) "rural community" means a village or city that

31 (A) has a population of less than 10,000, is determined by the

1 Department of Labor and Workforce Development;

2 (B) is in the unorganized borough; or

3 (C) is in an organized borough that has a population of less
4 than 25,000, as determined by the Department of Labor and Workforce
5 Development.

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

8 **APPLICABILITY.** A health care facility that is required to file reports under
9 AS 18.20.460, enacted in sec. 2 of this Act, shall file its first report before February 1, 2010,
10 for the period July 1, 2009, through December 31, 2009.

11 * **Sec. 4.** AS 18.20.460, enacted in sec. 2 of this Act, and sec. 3 of this Act take effect
12 July 1, 2009.

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