Alaska Native
Tribal Health Consortium

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POSITION PAPER

SB 12/HB 50 – "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."

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DATE: March 9, 2009

POSITION: Oppose

The Alaska Native Tribal Health Consortium (ANTHC) is a tribally controlled, non-profit, statewide tribal health organization formed pursuant to federal law to provide a range of medical and community health services for more than 130,000 Alaska Natives. It is part of the Alaska Tribal Health System (ATHS), which is owned and managed by the 231 federally recognized tribes in Alaska and by their respective regional health organizations.

ANTHC and Southcentral Foundation jointly manage the Alaska Native Medical Center (ANMC), the tertiary hospital of the ATHS located in Anchorage. We employ 500 nurses. In January of this year ANMC was recognized for a second time as a Magnet Hospital, a highly prized award given by the American Nursing Association. Only five percent of all U.S. hospitals achieve Magnet Status, and even fewer are designated a second time. ANMC is the first and only Alaska hospital to receive Magnet Status. Magnet hospitals have demonstrated that they meet a set of criteria designed to measure the strength and quality of their nursing, including the ability of its nurses to contribute to patient outcomes, and where nurse job satisfaction, low turnover rates and appropriate grievance resolution are part of the standard.

We value our nurses, but we do not support SB 12 or HB 50, bills that seek to legislate work schedules and tie the hands of managers who are constantly juggling the demands of patient care against workforce availability and rising costs/chronic underfunding in the tribal health care system. We have three primary concerns about the bill as currently written:

1) *It would have a disproportionate and detrimental impact on patients in rural Alaska*
2) *It conflicts with Alaska's longstanding policy of supporting access to health care through allowing health care facilities an appropriate degree of flexibility in scheduling direct health care providers.*
3) *It creates the inaccurate impression that it applies to federal and tribal facilities and programs that comprise the Alaska Tribal Health System*

1) Disproportionate and Detrimental Impact on Patients in Rural Alaska

The bill provides no new resources and no new options. In rural Alaska recruiting and retaining qualified nurses is not merely a challenge, as it is for all of Alaska and much of the United States; it is a constant struggle. Vacancy rates, recruitment costs and staff turn-over continually plague these providers, especially tribal health providers.

This bill restricts the ability of hospital managers to work with their nursing staff to craft options in a health system that is already stretched to its limits in both staffing and financial resources. There is a real risk that the bill would lower nurse/patient ratios and decrease the quality of care patients receive by tying the hands of providers to balance patient needs with available workforce, including nurses. In rural Alaska, when nurses are not available, then patients must be diverted to another facility. Since there are no other options in rural Alaska, patients typically get diverted to the Alaska Native Medical Center. Because ANMC, as a statewide facility, serves all regions, then we experience a compounding effect at ANMC, a facility that is already too small to meet patient care needs. When ANMC is at capacity, we too are forced to divert patients to other facilities in Anchorage. This is an every day challenge, but is especially problematic during public health outbreaks. Diverting patients disrupts the continuity of care for our patients and imposes an additional financial burden on our already under-funded health system.

The bill also sets forth a reporting requirement to the State Department of Labor. Because tribal health facilities are not licensed by the state, as explained below, we believe we would not be subject to the reporting requirements. To the extent a tribal provider did comply, it would create a new, costly system of collecting data and preparing reports. ANMC employs nurses who are licensed by the state and nurses who are part of the Commissioned Corp under the federal Public Health Service, further complicating any perception of what would be required under a state law.

2) Conflict with Longstanding State Policy of Supporting Access to Health Care

The Alaska Legislature has recognized the necessity of promoting access to health care through appropriate limitations to wage and hour requirements since at least 1962 when it enacted the "hospital employee" exemption.[1] From 1962 to 1983, all employees of *non-profit hospitals* were exempt from that law. While the exemption was narrowed slightly in 1983 to cover only those employees who provide "medical services," the Legislature also expanded the exemption to the employees of *all hospitals*, not just those employed by non-profits.[2] This change addresses the "interest in keeping medical facilities open and providing more flexible schedules for employees whose extended hours of labor were needed to maintain the hospital in operation at all time" and more generally the need to "enhanc[e] access to health care" in Alaska.[3]

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[1] AS 12.10.060 (1962); *Hutka v. Sisters of Providence*, 102 P.3d 947, 952 (Alaska 2004).
[2] *Hutka*, 102 P.3d at 952-53.
[3] *Hutka*, 102 P.3d at 953.

3) Applicability to Federal and Tribal Health Providers

Providing health care services to Alaska Natives and American Indians is a federal function that contributes to the fulfillment of the federal government's trust responsibility to Alaska Natives and their Tribes.[4] A federal facility performing a federal function is not subject to state regulation, even if the function is carried out by another entity, unless Congress clearly authorizes such regulation.[5] Congress has not authorized state regulation of federal health facilities serving Indian tribes and their members or of tribal facilities that fulfill this federal function pursuant to the Indian Self-Determination and Education Assistance Act.

Rather, Congress has taken pains to promote self-determination and self-governance by ensuring that Tribes and tribal organizations have sufficient flexibility to address the unique needs of Native Americans and the extraordinary challenges of providing quality, culturally appropriate health care with very limited resources, often in extremely remote locations. This is because one of the purposes of the ISDEAA is to provide

> a meaningful Indian self-determination policy which will permit the orderly transition from the Federal domination of programs for, and services to, Indians to effective and meaningful participation by the Indian people in the planning, conduct, and administration of those programs and services.[6]

For similar reasons, Congress has provided an explicit exemption for Tribes and tribal organizations from the operation of most federal employment law, including Title VII of the Civil Rights Act of 1964, the American with Disabilities Act, and the Davis-Bacon prevailing wage rate requirements.[7] Courts have also recognized tribal exemptions with respect to other federal laws, like the Age Discrimination in Employment Act (ADEA), that do not specifically address their applicability to Tribes and tribal organizations.[8] One federal appellate court ruled that other federal laws and interests must give way to ISDEAA's overriding objectives when it

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[4] *See, e.g.*, 25 USC § 1616*l*; S. Rep. No. 102-392 at 2 (1992), *as reprinted in* 1992 USCCAN 3943, 3944. *See, also,* note 2, *supra.*

[5] *Goodyear Atomic Corporation v. Miller*, 486 U.S. 174, 181 (1988).

[6] 25 USC § 450a(b).

[7] 42 USC § 2000e(b)(1); 42 USC § 12111(5)(B)(i); 25 USC § 450e(a). *See also, Pink v. Modoc Indian Health Project*, 157 F.3d 1185, 1188-89 (9th Cir. 1998) (non-profit corporation created by two tribes qualified as an "Indian tribe" under Title VII where corporation was formed to deliver health care services under an ISDEAA agreement, even though services were provided outside the boundaries of a reservation), *Setchell v. Little Six, Inc.*, No. C4-95-2208, 1996 WL 162560, at *2 (Minn.App. April 9, 1996), *cert. den.* 521 U.S. 1124 (1997).

[8] 29 USC§ 626(d). *E.g., EEOC v. Karuk Tribe Housing Authority*, 260 F.3d 1071, 1081 (9th Cir. 2001) (ADEA inapplicable to tribal housing authority that "occupies a role quintessentially related to self-governance"); *Taylor v. Alabama Intertribal Council*, 261 F.3d 1032 (11th Cir. 2001) (employee's race discrimination claim concerned tribal self-governance and intramural Indian matters). *See also Penobscot Nation v. Fellencer*, 164 F.3d 706 (1st Cir. 1999) (employment of a non-Native in federally funded public health nurse position is an "internal tribal matter" and not subject to state regulation).

addressed the potential applicability of the National Labor Relations Act to the Yukon-Kuskokwim Health Corporation.[9]

Congress and the federal courts have thus essentially deemed the Fair Labor Standards Act (FLSA) to be sufficient protection for tribal employees.[10] Because of the unique nature of nursing care, however, some nurses are exempt from FLSA's wage and hour requirements while others are protected through special provisions that specifically accommodate the need for scheduling flexibility. The Act's implementing regulations were recently revised with the benefit of comprehensive comments from nursing associations, patient advocacy groups, and health care facilities and they continue to recognize the need and appropriateness of allowing for this degree of flexibility. Alaska's own wage and hour laws and regulations are quite similar to the federal scheme in this respect.

At the same time, the Indian Health Care Improvement Act (IHCIA) and the Indian Self-Determination and Education Assistance Act (ISDEAA) provide a comprehensive framework for regulating tribal health care. Their broad language, together with the exemption from most federal employment law, provide a clear indication that Congress did not intend to allow federal agencies to impose their own rules on Tribes and tribal organizations, much less subject them to potentially overlapping and less flexible requirements enacted by individual states. Otherwise state law would "obstruct[] the execution of the purpose of the federal [law]."[11] The Supremacy Clause and the federal preemption doctrine prohibit this, especially in areas like Indian health care that has been a federal responsibility for centuries.[12]

"The Alaska courts have noted that the provision of Indian health care services is an area that is "comprehensively and pervasively regulated by the federal government which is manifested in both the ISDEAA and the IHCIA."[13] Once the federal government has thus occupied the field, there is no allowance for state regulations, even if it is consistent with statutory purposes.[14]

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[9] *YKHC v. NLRB*, 234 F.3d 714, 718 (D.C. Cir. 2000) ("NLRA must make in order to accommodate federal Indian law, as reflected in [ISDEAA]").. The Board concluded that it was inappropriate to exercise jurisdiction over YKHC in light of its role in fulfilling federal government's trust responsibility to provide free health care to Alaska Natives. *See also* 29 USC § 151, *et seq.; YKHC and International Brotherhood of Teamsters, Local 959, AFL-CIO, CLC*, 341 NLRB No. 139, May 28, 2004 (declining to exert jurisdiction over off-reservation tribal health organization fulfilling federal trust responsibility to provide free health care to Alaska Natives, even though organization employs many non-Natives and provides health care services to a small number of non-Natives).

[10] 29 USC § 201, *et seq.*

[11] *The Alaska Dental Society, et. al. v. State of Alaska, et. al*, 3AN-0604797 CI, 12 (June 27, 2006), *quoting Catalina Yachts v. Pierce*, 105 P.3d 125, 128 (Alaska 2005).

[12] *Alaska Dental Society* at 15, *citing Wachovia Bank, N.A. v. Burke*, 414 F.3d 305, 313 (2d Cir. 2005) (no presumption against federal preemption in fields substantially occupied by federal authority for extended time); *United States v. Locke*, 529 US 89, 108 (2000) (no presumption against preemption is triggered when significant history of a federal presence,).

[13] *Alaska Dental Society* at 15, *citing Ketchikan Gateway Borough v. Ketchikan Indian Corporation*, 75 P.3d 1043, 1049 (Alaska 2003). *See also, id.* at 1048 (majority setting aside issues of whether tribal health clinic is "subject to comprehensive and pervasive federal oversight.")

[14] *E.g., National Audubon Society v. Davis*, 307 F.2d 835, 851 (9th Cir. 2002).

In addition to this existing federal law, CMS quality standards and Joint Commission standards impose high quality standards on federal and tribal facilities that participate in the Medicare and Medicaid programs. In Alaska, this includes all of the major IHS and tribal health facilities.

Together, these federal laws address the same concerns intended to be addressed by SB12/HB50. However, they do so in a way that allows facilities more flexibility. While they impose certain performance and quality standards, they do not dictate the means for accomplishing them by imposing rigid requirements that may or may not lead to the same level of performance or quality (or, in the case of rural Alaska, undermine the very goals that the bill sponsor is trying to promote).

Conclusion

We understand that the bill sponsors and supporters are trying to protect nurses from being overworked and patients from accidental errors that may occur as a result. However, we don't believe legislating hours is the right solution. ANTHC and our partner tribal health facilities work very hard to recruit and retain quality nurses. We place high value on the nurses who work for us, and are actively involved in programs like the University of Alaska's Rural Nursing Program. We have been innovative in crafting solutions where physician and nursing services have been non-existent—principal among them, the Community Health Aide Program.

We also value the partnerships we have with many of our non-tribal hospitals/health system partners. We understand the value of flexibility in workforce negotiations. Legislation, of course, takes discussion regarding choices off the table. We in the tribal health system have our own history of suffering unintended consequences from legislation that started with the best of intentions. Today, through our compact with the Indian Health Service, we engage each year in a very formal negotiation, where challenges for everyone involved are brought to the table and worked through to the point of consensus. We support the request of our partners that this legislation be held and to let the process of labor negotiations to proceed.

Thank you for your careful consideration of these issues. We would be happy to provide any further information upon request.

ASHNHA
Alaska State Hospital and Nursing Home Association

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TESTIMONY ON HOUSE BILL 50

ASHNHA represents 27 private, federal, state, and tribal health care facilities located throughout Alaska. The testimony presented here has been approved by ASHNHA's general membership (see detailed member list at bottom of testimony).

ASHNHA's membership does not believe the limitations proposed in House Bill 50 are needed to assure continued delivery of excellent patient care throughout the State.

ASHNHA's members have a long-standing commitment to respect the individual importance of each nurse in our health care delivery mission, and to treat each nurse fairly in the work place. This obligation to our nursing staff must be balanced with providing the best possible care to each patient.

ASHNHA believes our members are responsibly negotiating work scheduling policies with their nursing staff through local work agreements that meet the unique needs in each community. Solutions in Anchorage to work scheduling challenges for Petersburg will be different than what will meet the needs of management and nursing staff in Anchorage. A standard statewide mandate on how work scheduling must be done as proposed in House Bill 50 is not a realistic approach to solving these work scheduling challenges around the state.

From the consumers' perspective there are tools for determining objectively how well Alaska hospitals and nursing homes are meeting their patient care goals while not overburdening the nursing staff. Two of these resources include:

1. ***Hospital Compare*** data collected by the U.S. Department of Health & Human Services. This data captures critical information on care provided as well as patient feedback on their experience in the hospital setting. Specifically with respect to the patient's satisfaction with their hospital experience, Alaska's hospitals compare quite favorably against national statistics in this area. Some examples from the U.S. DHSS data include:
   - How often did patients feel they received help quickly?
     a. U.S. average was 88% reporting 'always' or 'usually'
     b. Alaska average was 90% reporting 'always' or 'usually'

   - How often did nurses communicate well to the patients?
     a. U.S. average was 94% reporting 'always' or 'usually'
     b. Alaska average was 95% reporting 'always' or 'usually'

   - How did patients rate their hospital experience overall?
     a. U.S. average was 89% reporting 7 or higher on scale of 10
     b. Alaska average was 89% reporting 7 or higher on scale of 10

2. **Numerous federal, state and private resources** are available that examine medical care delivery processes, policies, outcomes, patient complaints, and adequacy of staffing among others. None of these organizations have pointed to any patient care issues related to requiring nurses to work beyond agreed upon shifts.

In addition to these consumer resources, ***ASHNHA*** has tracked mandatory overtime usage for four years in Alaska through our own survey. The latest data is shown in the attached table. This survey has allowed ***ASHNHA*** to gain a better understanding of the frequency with which 'mandatory' overtime is used by our member facilities. **'Mandatory'** in this context is overtime that is not willingly worked by a nurse and does not include 'on-call' overtime hours.

While there certainly are times when a nurse is required to stay beyond their shift because of an unexpected staffing problem, this happens very seldom and management's policy is to find nursing staff quickly to fill these unanticipated staffing gaps. ***ASHNHA's*** latest nurse overtime survey comparing 2007 and 2008 mandatory overtime usage demonstrates our members continuing commitment to minimize use of mandatory overtime. In fact only 4 facilities reported mandatory overtime usage in 2008 and the majority of the overtime hours reported were by the state operated Alaska Psychiatric Institute.

How do Alaska facilities keep use of mandatory overtime to a minimum? Alaska facilities have developed strategies to avoid situations that would require the use of mandatory overtime. These strategies begin with a comprehensive analysis of patient activity, types of procedures and other information to determine the number of nursing staff required by time of year, time of day and area of hospital care. Management uses this information to insure adequate staff is available to meet patient care needs 24/7, 365 days a year.

Based on this analysis, management and nursing staff agree to on-call policies to meet the needs of patients during low demand periods for very specialized procedures. These on-call expectations are known by nursing staff when they choose these specialized areas to work in. In small, rural facilities there may be general on-call expectations in order to be sure nursing staff is available 24/7 given the low volume of patient admissions that these facilities experience and the greater difficulty these facilities have hiring experience nursing staff.

In addition, hospitals and nursing homes have pre-established arrangements with temporary nurse staffing agencies to bring in temporary nursing staff to fill unexpected gaps in staffing. As you will note on the attached table displaying temporary nursing hours purchased by Alaska facilities, nearly ¼ million hours of temporary nursing time was used by Alaska facilities to avoid imposing mandatory overtime on their nursing staff.

A key contributor to Alaska's facilities' need to use temporary staffing hours is the ongoing challenge in hiring adequate nursing staff for the many different care settings that a facility must provide. *ASHNHA* members have been very proactive to address this issue over the last five years including:

1. Financially contributing to the University of Alaska expansion of their nursing program from 100 nurses each year to over 200 nurses each year.
2. Creating clinical experiences for student nurses and recently graduated nurses to gain hands-on nursing experience required to complete their education, or to achieve the patient care experiences necessary to become employed in a hospital setting.
3. Providing distance learning opportunities so local residents can take nursing courses in their own community with minimal need to spend large amounts of time out of town to achieve their clinical experiences.
4. Purchasing tens of thousands of hours of temporary nursing hours to fill staffing gaps to minimize use of mandatory overtime.

Even with these initiatives approximately 1/3rd of the facilities reporting on this year's survey believe the nursing shortage situation has worsened. The good news is that with all the additional attention provided by the University of Alaska to graduate more nurses combined with Alaska facilities expanded programs to provide hands-on training experiences for them, 2/3rd of the facilities reported that the nursing shortage was at least the same if not better. This is a slight improvement over years past.

RECAP OF ASHNHA's CONCERNS with HB 50:

- ***ASHNHA's*** data shows Alaska's hospitals and nursing homes are not routinely relying on mandatory overtime to fill staffing gaps. On the contrary ***ASHNHA's*** data shows that use of mandatory overtime is a rare occurrence with all but 4 facilities reporting **ZERO** use of mandatory overtime in 2008 (see attached chart).

- ***ASHNHA's*** data continues to show that no employee grievances on inappropriate use of mandatory overtime were reported for 2007 or 2008 by facilities.

- ***ASHNHA*** believes that establishing work hours and scheduling are appropriately a local employer responsibility to negotiate with its employees. This is being done in every community in a responsible manner with equal concern to employee and patient concerns. Work force challenges vary significantly from one community to the next making a single approach to addressing this challenge unworkable. A number of facilities are either in negotiations with nursing staff or will begin those negotiations shortly. These negotiations should be given an opportunity to address any concerns from nursing staff.

- The ongoing monitoring systems operated by federal, state or independent private agencies that review patient care show Alaska health care quality is excellent. None of these organizations has identified use of mandatory overtime as a problem related to delivery of excellent patient care in Alaska.

- ASHNHA's members have worked diligently to reduce the nursing shortage problem in Alaska by contributing substantial funding over the last four years to help support an expanded nursing program at the University of Alaska. This program is now graduating 200 nurses annually compared to 100 nurses before the program's expansion.

- House Bill 50 would impose a new reporting burden for Alaska facilities. These reports would have to be filed semi-annually and must contain detailed work hour information for each staff nurse employed by the facility as well as each contract nurse.

Contact for more information: Rod Betit, President/CEO ASHNHA rbetit@ashnha.com

This Testimony is on Behalf of the Following Alaska Health Care Facilities

Alaska Regional Hospital, Alaska Native Medical Center, Bartlett Regional Hospital, Central Peninsula General Hospital, Cordova Community Medical Center, Denali Center Nursing Home, Fairbanks Memorial Hospital, Heritage Place Nursing Home, Kanakanak General Hospital, Ketchikan General Hospital, Maniilaq Health Center, Mt. Edgecumbe Hospital SEARHC, Norton Sound Regional Hospital, Petersburg Medical Center, Providence Alaska Medical Center, Providence Extended Care Center, Providence Kodiak Island Medical Center, Providence Seward Medical & Care Center, Providence Valdez Medical Center, Sitka Community Hospital, South Peninsula Hospital, St. Elias Specialty Hospital, Wrangell Medical Center, Yukon Kuskokwim Delta Regional Hospital, North Star Behavioral Health, Wildflower Court Nursing Home.

ASHNHA 2007 and 2008 NURSE OVERTIME SURVEY RESULTS -
(March 11, 2009)

Facility	Nurses in Union?	Shortage Better, Worse, Same	Length of Shift (Hrs)	Nurse Vacancy Rates as %		Mandatory OT Usage- Total Hrs		On-call Policy		Temp Nursing Hours Needed to Fill Vacancy		# of OT grievances filed 2008
				2007	2008	2007	2008	Require	# times /month	2007	2008	
Alaska Regional Hospital	Yes	Same	12	19%	15%	0	0	OR only	3x	44,349	30,542	0
Alaska Native Medical Center	No	Data Not Available at This Time										
Alaska Pioneer Homes (All Six Facilities)	Yes	Same	7.5,10,15	n/a	n/a	0	0	n/a	n/a	0	0	0
Alaska Psychiatric Institute	Yes	Same	8.10,12	19%	14%	468.5	285.5	No	n/a	n/a	n/a	0
Bartlett Regional Hospital	Yes	Worse	12	14%	5%	108	104	OR only	56hr/mo	19625	18518	0
Central Peninsula General Hospital	Yes	Same	8,12	10%	2%	37	36	Surgery	7x	1230	0	0
Cordova Community Medical Center ✔	No	Same	12	10%	11%	0	0	Certain Units	3x	2673	2452	0
Denali Center Nursing Home	No	Better	8.10,12	6%	5%	0	0	No	n/a	1860	1760	0
Fairbanks Memorial Hospital	No	Same	8.10,12	10%	10%	0	0	Certain Units	Varies by Unit	n/a	47000	0
Heritage Place Nursing Home	No	Same	8.10,12	10%	10%	0	0	No	n/a	0	0	0
Kanakanak General Hospital ✔	No	Data Not Available at This Time										
Ketchikan General Hospital ✔	Yes	Better	8,9,10,12	7%	8%	0	0	Certain Units	1 to 10x	11,700	15,000	0
Maniilaq Health Center ✔	No	Data Not Available at This Time										
Mt. Edgecumbe SEARHC Hospital	No	Better	8,9,10,12	25%	12%	0	100+	Certain Units	1 to 10x	27,960	15,421	0
North Star Behavioral Health System	No	Same	8,16	10%	10%	0	0	No	n/a	0	0	0
Norton Sound Regional Hospital ✔	No	Data Not Available at This Time										
Petersburg Medical Center ✔	No	Same	12	13%	12%	0	0	Yes	8	3000	2650	0
Providence Alaska Medical Center	Yes	Worse	8,10,12	8%	12%	0	0	Certain Units	n/a	102,438	85,103	0
Providence Extended Care Center	No	Worse	8,10,12	9%	13%	0	0	No	n/a	188	0	0
Providence Kodiak Island Medical Center ✔	Yes	Worse	8,10,12	8%	16%	0	0	Certain Units	n/a	2192	0	0
Providence Seward Medical & Care Center ✔	No	Worse	8,10,12	11%	4%	0	0	No	n/a	2318	905	0
Providence Valdez Medical Center ✔	No	Worse	8,10,12	36%	22%	0	0	No	n/a	2193	4853	0
Sitka Community Hospital ✔	No	Better	8,12	21%	6%	0	0	No	n/a	5100	2748	0
South Peninsula Hospital ✔	Yes	Same	8,10,12	3%	8%	0	0	Certain Units	4-13x	840	4920	0
Wildflower Court Nursing Home	No	Same	8,10,12	0%	0%	0	0	Yes	1	0	1000	0
Wrangell Medical Center ✔	No	Worse	8,12	0%	10%	0	0	Yes	4hr - 14X	0	500	0
Yukon Kuskokwim Regional Hospital	No	Same	10,12	n/a	n/a	0	0	Certain Units	n/a	n/a	12,600	0
TOTAL	9Y 18N	12S7W4B		12.0%	9.0%	613.5	425.5			227,666	245,972	0

AaNA
Alaska
Nurses
Association

House Bill No. 50: "Safe Nursing & Patient Care Act"

What Does *HB 50* 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 *HB 50* 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.

- ***HB 50* 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.

Alaska Nurses Association

House Bill No. 50: "Safe Nursing & Patient Care Act"

Facility October 1st - March 31, 2008	Facility Visited	Nurses Interviewed	Staff Nurses Reporting mandatory Overtime	Mandatory On-Call Required	Number of Nurses Interviewed	Practice Issues if Abandoning Patients
Alaska Regional Hospital	Yes	Yes	100%	Yes	25	Yes
Alaska Psychiatric Institute	No	Yes	50%	Yes	10	Yes
Bartlett Regional Hospital	Yes	Yes	100%	Yes	30	Yes
Central Peninsula Hospital	Yes	Yes	75%	Yes	60	Yes
Fairbanks Memorial Hospital	Yes	Yes	100%	Yes	10	Yes
Heritage Place Nursing Home	Yes	Yes	100%	Yes	14	Yes
Providence Alaska Medical Center	Yes	Yes	100%	Yes	150	Yes
Providence Kodiak Island Medical Center						
Providence Seward Medical Center	Yes	Yes	100%	Yes	2	Yes
Providence Valdez Medical Center	Yes	Yes	100%	Yes	5	Yes
Sitka Community Hospital						
South Peninsula Hospital	Yes	Yes	50%	Yes	30	Yes
Wrangell Medical Center	No	Yes	100%	Yes	2	Yes

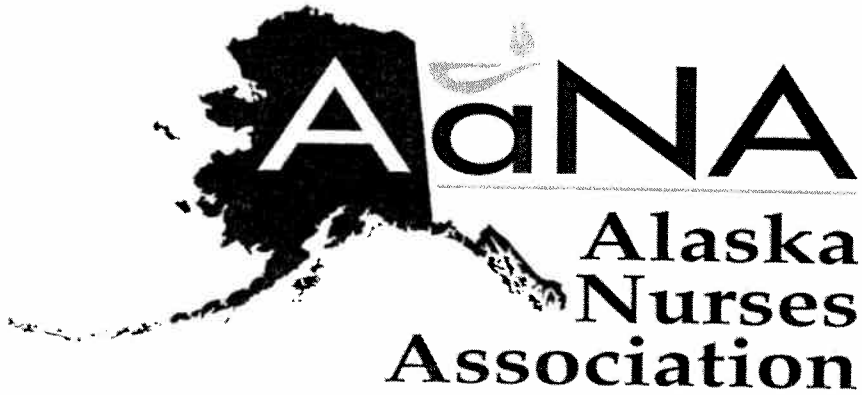
This data is based on face to face meetings conducted by Tom Renkes prior Executive Director of AaNA, and confirmed over the past months by current Executive Director Debbie Thompson.

Dangers of Mandatory Overtime:

FATIGUE and ERRORS

Support House Bill 50

Referred to as the Alaska Safe Nursing and Patient Care Act



Danger: Might As Well Of Had a Drink!

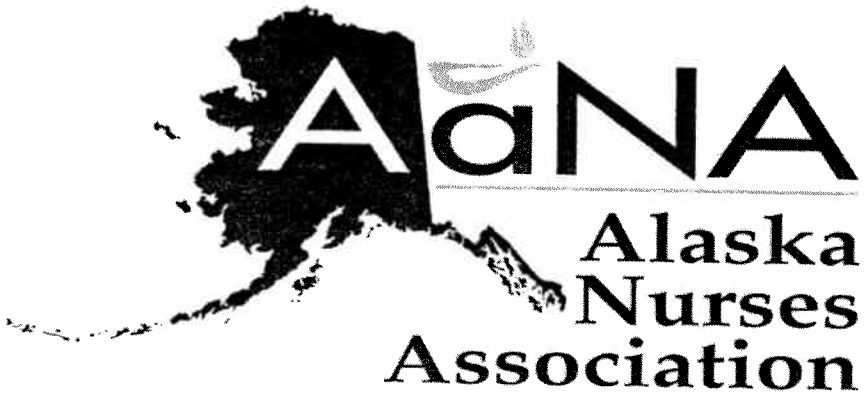
The long hours worked by some nurses pose some of the most serious threats to patient safety. Prolonged periods of wakefulness can produce effects that are similar to the effects produced by alcohol intoxication. This may include decreases in reaction time and the speed of mental processing.

Danger – Close to Intoxication

Periods of wakefulness in excess of 16 hours can produce performance decrements equivalent to a blood alcohol concentration (BAC) level of .05 percent. Alcohol intoxication is defined as .08 to .10 varying among the individual states. Do you want an exhausted nurse taking care of you or your family members?

Danger – Patient Safety at Risk

The impact of hours worked, duration of work, and overtime in this study were shown to have a statistically significant impact on patient safety as well as nurse satisfaction and retention in the profession.



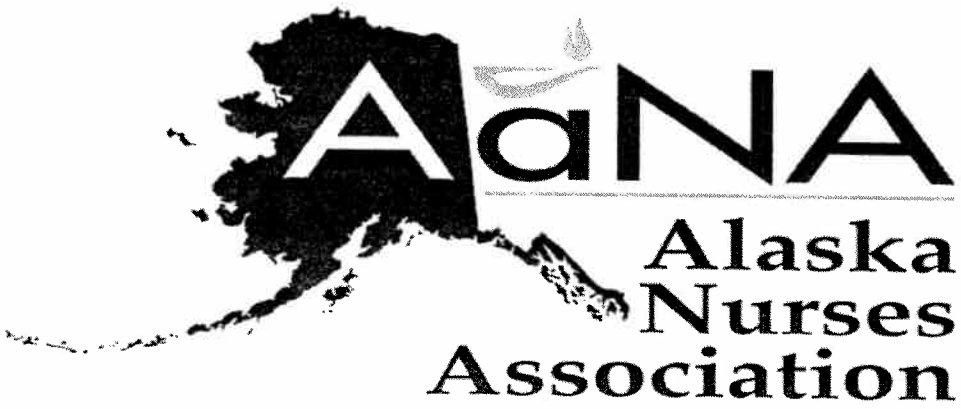
Danger –

likely to make at least one error

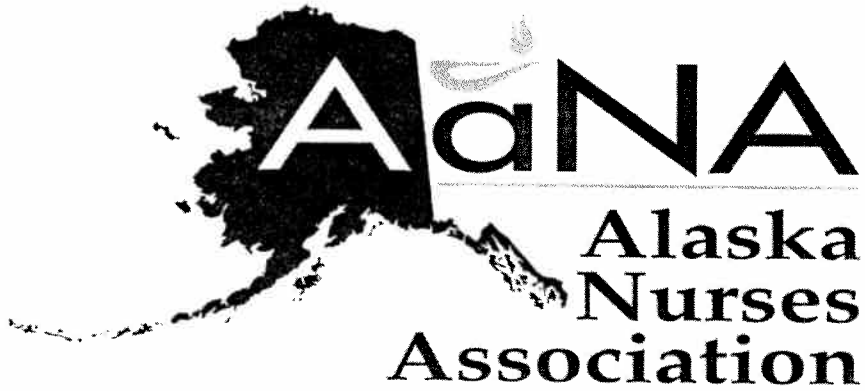
"The likelihood of making an error increased with longer work hours and was three times higher when nurses worked shifts lasting 12.5 hours or more…." and "working overtime increased the odds of making at least one error, regardless of how long the shift was originally scheduled."

Link Found

The authors of this study conclude that these findings imply a link between poor working conditions (long hours and overtime, mandatory or otherwise) and patient safety. In response to this and other admonitions concerning the elimination of mandatory overtime for nurses, almost half of the states in the nation have either enacted or introduced legislation concerning this issue.



- The sources for the previous slides are a 2002 Report from the Michigan Nurses Association and from an article by the Institute of Medicine written in 2004, with updates from other sources.



Danger – PATIENT SAFETY AT RISK!

Threats to patient safety that are likely to result from extensive nursing overtime include the following:

- **Nurses being less alert to changes in patients' condition**
- **Nurses having slower reactions**
- **Medication errors – adverse drug events**
- **Increase in nosocomial infections**
- **Increase in decubiti**

Institute of Medicine Report

The Institute of Medicine estimates that approximately 100,000 hospital deaths can be attributed to medical errors each year. Mandatory overtime is a serious contributing factor to medical errors. The final recommendation of the IOM is that all overtime, voluntary and mandatory/involuntary done by nurses should be curtailed.

Not A "Bargaining Issue"!
This is a Public Safety Issue

The Alaska public has a right to expect when they walk into a healthcare facility, that the nurse taking care of them is properly rested and alert.

(And that their RN hasn't been working 16 hours that day already.)

Not A "Bargaining Issue"! This is a Public Safety Issue

- At registration, a member of the public should not have to request a copy of the most recent Collective Bargaining Agreement to see how successful their nursing staff has been in negotiating reasonable working conditions.
- Not all nurses are represented by a union. What do we do for these nurses and their patients?

Washington State Passes Law in 2002

Anne Piazza, lobbyist for WSNA testified before Representative Peggy Wilson's special House HESS committee in January 2006:

"The State of Washington passed a law to prohibit mandatory overtime for nurses with the cooperation of the WSNA, other nursing unions, and the Washington Hospital Association."

Washington State

Mandatory overtime puts patients, nurses and the profession at risk. Many health care facilities have turned to the use of mandatory overtime as a common practice to fill longstanding staffing and scheduling problems.

Shifting the entire burden to employees when there is a labor shortage is not the answer to attracting qualified persons to the profession.

Washington State

One of the reasons that the nursing shortage as it exists today is because qualified nurses are not working in the field or leaving the profession because they can no longer work the long hours or safely take care of their patients. Forced overtime is adding to this shortage.

Massachusetts Study

Research from the University of Massachusetts shows a strong link between working overtime and sustaining a work-related injury. This was found to be true for all occupations… working longer hours (12 hours a day or more) was associated with a 37 percent increase in risk.

(Chantal Britt, Bloomberg, "Overtime, Long Houses Increase Illness, Injury Risk, Study Shows," August 22, 2005.)

States Which Ban or Limit Forced Overtime

California
Connecticut
Illinois
Maine
Maryland
Minnesota
Missouri
New Hampshire
New Jersey
New York
Pennsylvania
Oregon
Texas
Washington
West Virginia

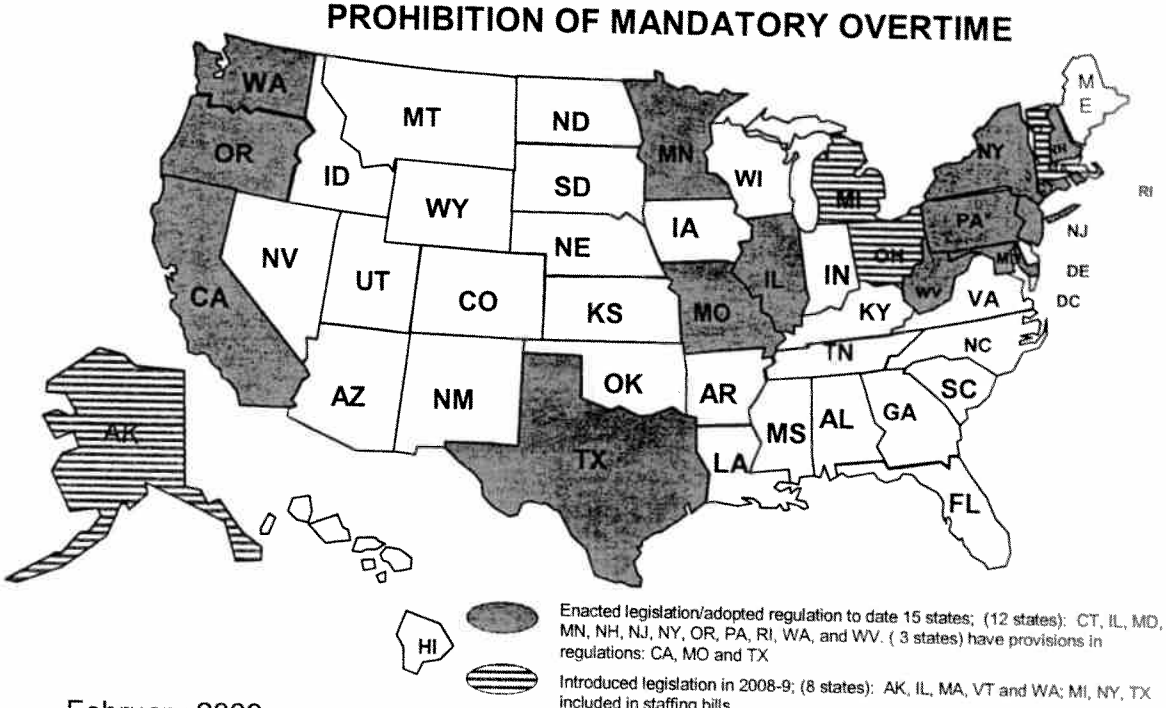
Additional States Lining Up

There is legislation banning the use of mandatory overtime pending in the following states:

Alaska	**Florida**	**Georgia**
Hawaii	**Iowa**	**Michigan**
Nevada	**Ohio**	**Rhode Island**
Tennessee	**Vermont**	

States that have passed a Mandatory Overtime Bill & States with Legislation Pending.

The American Nurses Association's Nationwide State Legislative Agenda



February 2009

Support Alaska House Bill 50

Your nurse will always be there for you in time of an unforeseen emergency situation, disease outbreak, natural or man-made disaster.

Your nurse will be able to voluntarily work overtime so long as the work is consistent with professional standards of safe patient care and does not exceed 14 consecutive hours.

AaNA
Alaska Nurses Association

Questions for you as Law Makers

•The Federal Government has p[redacted] the number of ho[redacted] that pilots can safely fly, truckers can safely drive, [redacted] engineers can drive a train and a ship. IOM has recommended the number of consecutive hours that medical residents and interns can safely work - all for public safety. Why would anyone not want to do the same for nurses when they care people w[redacted]?

•Where is the law that says as a nurse you lose your right to basic human rights? Time off, time to rest, to eat and to have time off for family?

Support Alaska House Bill 50

But with HB 50, a nurse will be able to say, "I am tired and do not think that I can practice quality, safe patient care at this time."

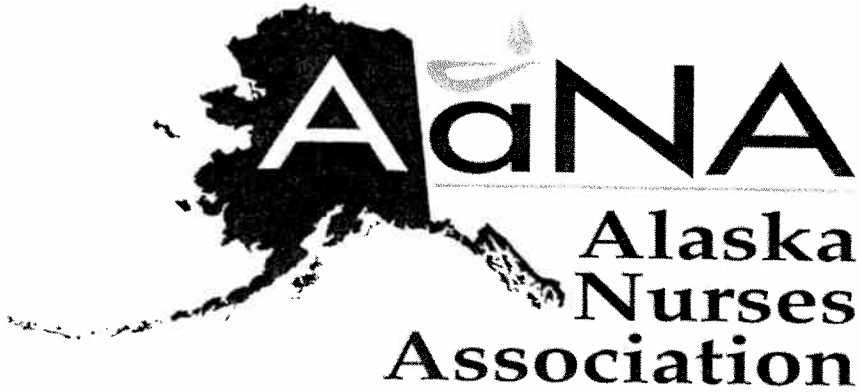
Knowing his or her own limits, the nurse can refuse to be assigned the forced overtime in the first place. Our nurse would now be able to do this without fear of reprisal, retribution, or loss of job.

AaNA
Alaska
Nurses
Association

Questions for you as Law Makers

•Do you think t[redacted]urses should have the right to refuse
ov[redacted]
safe[redacted]se

•When you answer these questio[redacted]ny hope that you will not only support HB50, but also support the nurses that have come forward putting safe patient care above their job, their license and concern for retaliation to protect the public when, [redacted] at a time when patients are their most vulnerable and need a strong committed advocate. Now it is your turn to become a nurse advocate.



We Urge Your Support for HB 50

It will protect the individual patient.

It will protect the Registered Nurse.

It will protect the healthcare facility.

It will enhance the nursing profession.

It will help recruit nurses.

It will help retain nurses.

It's good public policy.

It's common sense.

Thank you.

Testimony on House Bill 50
House Health and Social Services Committee
presented by Roger Lewerenz, RN at the Heart Center
Providence Alaska Medical Center
March 12, 2009

Good afternoon Mr. Chairman and Committee members. My name is Roger Lewerenz and I am a registered nurse and work as a clinical nurse education for the Heart Center at Providence which includes cardio vascular observation, cardio vascular intervention unit and the Cath Lab.

The cath lab is a highly specialized are where patients having heart attacks, strokes and other life-threatening problems receive care. The staff consists of RN's, cardio vascular technologists, and radiology technologists. All of these staff have extensive specialized training making them competent to work in the Cath Lab. We care for patients from neonatal infants, who are hours old, to those who are just over one hundred years old.

I cannot have just any RN come into the Lab to assist because of the specialized nature of the work. I would estimate it would take approximately one year to fully train an experienced critical care nurse before he or she could be deemed qualified to provide care in the Cath Lab.

We staff the Cath Lab, Monday to Friday from 7:30 a.m. to 4:00 p.m. to handle regularly scheduled procedures. From 4:00 p.m. until 7:30 a.m. the next morning and on weekends we utilize a call team. This call team consists of an RN, a radiology technologist, and cardio vascular technologist. Each individual takes one night a week and one weekend every five weeks.

It is not unusual for this team to be called in, in the middle of the night, to provide care for a patient experiencing a heart attack or other life threatening emergency.

Without the availability of this call team, many patients may not receive the timely care they require.

Recently the team was called in to care for a patient experiencing a heart attack. Because of the availability of this call team, the patient survived.

There are nights when the call team does not get called in. There are other nights when they are there for several hours.

The restrictions that would be imposed if this bill passes would negatively impact our ability to care for this patient population due to the unavailability of trained staff.

Thank your very much for the opportunity to testify today.

Testimony on House Bill 50
House Health and Social Services Committee
presented by Cindy Alkire, Assistant Chief Nurse Executive
Providence Alaska Medical Center
Marcy 12, 2009

Good afternoon Mr. Chairman and members of the Committee. My name is Cindy Alkire and I am here today to testify on behalf of Providence Health and Services Alaska. I am the Assistant Chief Nurse Executive at Providence Alaska Medical Center. I have been a nurse for over 26 years and have provided direct patient care during my nursing career. In my current role as a nurse executive I am responsible for managing and directing the activities of nurses employed within The Children's Hospital at Providence.

Providence opposes House Bill 50 for many reasons. First, most Alaskan hospitals have been successful in avoiding the use of mandatory scheduled overtime, recognizing that nurses need rest between their shifts. Providence does not use mandatory overtime.

Secondly, this bill does not appropriately address the "on call" issue currently present in our operating rooms, post anesthesia care unit, cath lab, and dialysis unit. "On call" is defined as being available within 30 minutes to come in to work and care for patients. This is only used to provide rapid response to care for patients in life-threatening situations.

I have read through the history of this legislation and the "on call" issue appears to be the most critical issue that is unresolved.

The issue of "on call" is not easily solved since hospitals must provide emergency services 24 hours per day. Nurses working in the OR, Cath lab (Acute stroke, acute MI, infant cardiac defects), and Dialysis must have specialized training and experience to work in those areas. It is such specialized training that it makes its impossible to have just any RN step in and help. This specialized training can take up to 2 years to complete. Even within the Operating room there are specialties such as "the heart team". While routine procedures in these areas are scheduled during normal operating hours healthcare institutions must have a mechanism to deal with emergencies outside of normal business hours, that is the reason an "on-call" system was developed. Why is this important?

Our interpretation of the bill uses "on call" to mean the same as "work" thus limiting staff in these critical areas to be on call in combination with time actually worked. For example, if a nurse is on call in any of these areas during the week he/she could easily exceeds the 80 hours in a 14 day period or more than 14 hours in one day mandate.

Furthermore nurses many times choose to take their call time on the days they are scheduled to work so that it does not interfere with their regularly scheduled day off – this legislation would impact the nurse's ability to manage their own schedule and their own time off.

While Providence has done much to limit the amount of "on-call" it is still necessary because these areas must staff available for emergencies that occur on evenings, nights, holidays, and weekends. If requiring an "on call" staff person to fulfill their on call obligation is considered mandatory overtime, this bill would adversely impact the ability of hospitals to provide emergency surgery, heart caths, and emergency dialysis.

The way this bill is written and the implications of the "on call" piece could result in unsafe conditions for patients because there would not be enough volunteers of staff with the experience needed to provide 24 hours 7 day a week access to emergency care. There is even the risk that Alaskan hospitals would have to close some of their beds causing patients to seek healthcare outside of Alaska.

I ask you to consider for a moment how such an unsafe patient situation could occur. In our Neonatal Intensive Care unit we care for the most vulnerable of babies. One of the complications that can occur as they are growing and developing is an infection in their intestines. This infection can lead to an intestinal rupture and it occurs quite suddenly. The only way to survive this complication is immediate surgical intervention. This legislation could prevent this surgery from happening. Put yourself in the place of the family of this baby when they are told their baby died because we did not have the staff to perform the needed surgery. This type of situation could occur with many different patients and families if our "on-call" system is compromised. Therefore, we must have the flexibility to effectively staff, manage, and deliver healthcare that our patients expect and demand of our health care system.

Quality and safe patient care is Providence's first priority. Hospitals and health systems have many safeguards in place to ensure that patients receive quality care, including detailed inspections by the federal government, the state Department of Public Health, and private accrediting agencies such as the Joint Commission. Quality, performance improvement, staffing, competencies, and patient satisfaction are monitored continuously. In order to maintain accreditation, hospitals are required to measure patient acuity and care requirements and provide adequate hours of nursing care to meet those requirements. In addition our hospital's ability to maintain the confidence of their communities in providing top quality care determines, in large measure, the success of their futures.

Finally, Providence believes the use of mandatory nurse overtime which according to the this bill could include "on-call" is a labor relations issue and needs to be handled at the negotiating table. Collective bargaining affords

management and nursing representatives to work out local issues with solutions that work for that community. Flexibility in developing solutions and adjusting those along the way is far preferable to a one-size solution prescribed in state law. Providence is scheduled to begin negotiations with the union representing our nurses, the Alaska Nurses Association, in mid-March and the use of mandatory nurse overtime will be a part of those negotiations. Providence respectively requests that the Alaska Legislation allow us the opportunity to address these critical issues during our upcoming negotiations.

Thank you for allowing me to the opportunity to appear before you today to present testimony on House Bill 50.

Testimony on House Bill 50
House Health and Social Services Committee
presented by Marilyn Edwards, Operating Room Clinical Manager
Providence Alaska Medical Center
Marcy 12, 2009

Mr. Chairman and members of the Committee – my name is Marilyn Edwards and I am the Operating Room Clinical Manager at Providence Alaska Medical Center. I have been a nurse for 31 years, 30 of those in the operating room – the last five years at Providence.

My immediate concerns revolve around safe quality patient outcomes and a safe work environment for my operating room staff.

It would be devastating to patient outcomes to enact a "one-size solution" prescribed in state law to resolve/control a mandatory nurse overtime concern that does not exist at the Providence Alaska Medical Center Operating Room.

We pride ourselves in the OR at Providence in being able to provide quality care to our patients needing surgical intervention while providing optimal work/life balance for our staff.

We have staff RN's scheduled to work from Sunday at 6:45 a.m. through Saturday at 7:00 p.m.

We are fully staffed with RN's. I have zero vacancies currently. To clarify optimum work/life balance: less than half of my RN's work full time. The full breakdown is as follows:

48 OR registered nurses total. This includes:

- 2 educators
- 1 RN traveler
- 6 Team leads
- 1 registered dialysis nurse

8 of the 48 nurses work 12 hour shifts
Four of these 12 hour shifts were added in the past year at the request of four of these 48 RN's
7 nurses work 10 hour shifts, and
33 nurses work 8 hour shifts

22 of the 48 RN's work a 1.0 full time equivalent position
9 RN's work a .09 full time equivalent
4 RN's work a .08 full time equivalent, and

2 RN's work a .06 full time equivalent

We have 10 "registry" RN's – a registry RN is only required to work 3 shifts per month, with minimal call.

A 1.0 full time employee working 6:45 a.m. to 3:15 p.m., has an average of one evening call, one night call, and two weekend shifts, either scheduled shifts or "call" per four week period.

A 12 hour RN, .09 FTE, usually has night or weekend "call." Much of this call is assigned around the individual RN's request because they may want the call scheduled when they are also scheduled to work to allow for consecutive days/nights of time off.

2 RN team leads volunteer to take second night call more often. One team lead averages 7 to 9 orthopedic call shifts per month. The one heart team leader averages 14 to 17 calls/shifts per month that she volunteers for.

During the interview process for a new position, all OR staff candidates are notified of the call requirements for the OR. The assigned call coverage is necessary to provide rapid (30 minutes from when notified) response for emergent patient care above what we are routinely staffed for based on volume trends of operation.

I have read and heard anecdotal stories of nurses being "tired" and unable to provide quality, safe care to our patients. One such story I saw in the February 2009 edition of the Alaska Nurses Association publication reports "an acuity system that was failing the nurses at a facility. There was sadness expressed regarding the load these nurses carried home with them." I'm unsure if the over-worked and under-staffed nurses that this articles mentions were in a Montana facility where the author's relative received care. I'm not sure because it does not mention the location of the facility.

Why I bring this up is that we provided for time off for the employee to be with their sick and dying relative out of state. During this period, OR RN's volunteered and covered the mentioned employee's shifts and call while we interviewed and contracted to bring a traveling RN in to fill the staffing gap so as not to overburden our nurses with more call for a longer duration.

If the fellow PAMC OR nurses had not been "allowed" to cover the call shifts due to already meeting their call and work requirements, as set out by this bill, we would not have been able to accept heart patients during this short time period. That would be devastating to these critically ill patients -- to have to turn them away – divert them from the care they desperately need.