

HOUSE BILL NO. 170

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-NINTH LEGISLATURE - FIRST SESSION

BY REPRESENTATIVE DRUMMOND

Introduced: 3/30/15

Referred: Health and Social Services, Labor and Commerce

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to limitations on mandatory overtime work for nurses and certified
2 nurse aides."

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

4 * **Section 1.** AS 18.20.400 is amended to read:

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

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

10 (2) to accept an assignment of overtime if, in the judgment of the nurse
11 or certified nurse aide, the overtime would jeopardize patient or employee safety.

12 (b) Except as provided by (c) of this section, after working a predetermined
13 and regularly scheduled shift that is agreed to by the nurse or certified nurse aide and
14 the health care facility as authorized by (a)(1) of this section, a nurse or certified

1 **nurse aide** in a health care facility shall be allowed not less than 10 consecutive hours
 2 of off-duty time immediately following the end of that work.

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

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

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

13 (3) a nurse **or certified nurse aide** on duty in overtime status

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

16 (B) because of an unforeseen emergency situation that could
 17 jeopardize patient safety; in this subparagraph, "unforeseen emergency
 18 situation" means an unusual, unpredictable, or unforeseen situation caused by
 19 an act of terrorism, disease outbreak, natural disaster, major disaster as defined
 20 in 42 U.S.C. 5122, or disaster emergency under AS 26.23.020 or 26.23.140,
 21 but does not include a situation in which a health care facility has reasonable
 22 knowledge of increased patient volume or inadequate staffing because of some
 23 other cause, if that cause is foreseeable;

24 (C) because the health care facility has a scheduling problem
 25 caused by unforeseen weather conditions that prevent a second nurse from
 26 arriving at the facility to relieve the nurse on duty, **or a second certified nurse**
 27 **aide from arriving at the facility to relieve the certified nurse aide on duty;**
 28 in this subparagraph, "unforeseen weather conditions" means unusual,
 29 unpredictable, or unforeseen weather so extreme as to impair travel to the
 30 health care facility, but does not include a situation in which the health care
 31 facility has knowledge of the weather conditions far enough in advance to act

so that a scheduling problem under this subparagraph can reasonably be avoided; or

(D) for nurses, at a health care facility located in a rural community that declares a temporary nurse staffing emergency under AS 18.20.410(a) [AS 18.20.410];

(E) for certified nurse aides, at a health care facility located in a rural community that declares a temporary certified nurse aide staffing emergency under AS 18.20.410(b);

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

(5) a nurse or certified nurse aide 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 or certified nurse aide voluntarily working beyond 80 hours in a 14-day period so long as the nurse or certified nurse aide 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) a nurse or certified nurse aide who

(A) [IS EMPLOYED

(i) AT A PSYCHIATRIC TREATMENT HOSPITAL THAT TREATS ONLY CHILDREN OR AT A RESIDENTIAL PSYCHIATRIC TREATMENT CENTER, AS DEFINED UNDER AS 18.07.111, THAT TREATS ONLY CHILDREN; IN THIS SUB-SUBPARAGRAPH, "CHILDREN" MEANS PERSONS UNDER 19 YEARS OF AGE WHO ARE RECEIVING PSYCHIATRIC TREATMENT FROM A HOSPITAL OR CENTER OR WHO ARE RESIDING IN A CENTER AND WHO WERE UNDER 18 YEARS OF AGE ON THE DATE THAT THE TREATMENT OR PERIOD

1 OF RESIDENCE COMMENCED;

2 (ii) AT A RESIDENTIAL PSYCHIATRIC
3 TREATMENT CENTER AS DEFINED UNDER AS 47.32.900; OR

4 (iii) AT A SECURE RESIDENTIAL PSYCHIATRIC
5 TREATMENT CENTER AS DEFINED UNDER AS 47.12.990;

6 (B)] voluntarily agrees to work a 16-hour shift for the period
7 between 5:00 p.m. on a Friday and 8:00 a.m. on the Monday that immediately
8 follows and receives pay and benefits for that work that are equal to or greater
9 than the pay and benefits the nurse or certified nurse aide would receive for
10 working 20 regular hours in the same position; and

11 (B) [(C)] during the period described in (A) [(B)] of this
12 paragraph, does not work a 16-hour shift consecutive with another shift of
13 eight hours or more without an intervening break of at least eight hours;

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

19 * **Sec. 2.** AS 18.20.410 is repealed and reenacted to read:

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

26 (b) If, after making a substantial and reasonable effort to increase the number
27 of available certified nurse aides on staff and failing in that effort, a health care facility
28 in a rural community determines it is not able to meet the overtime limitations in
29 AS 18.20.400 without putting the safety of its patients at risk of serious harm, the
30 health care facility may declare a temporary certified nurse aide staffing emergency.

31 (c) Immediately after declaring a temporary staffing emergency under (a) or

(b) 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 (d) of this section. A report under this subsection is a public document.

(d) A declaration of a temporary staffing emergency under this section

(1) must be made in 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 staffing emergency; and

(2) may not exceed 30 days.

(e) In addition to the requirements of (a) - (d) of this section, a health care facility shall notify the legislature immediately by delivery of a written report to the Alaska Legislative Council each time the facility declares a temporary nurse staffing emergency under (a) of this section or a temporary certified nurse aide staffing emergency under (b) of this section that exceeds two occurrences of its type in a six-month period that begins on January 1 or July 1 of the year in which the declaration occurs, or three occurrences of its type in the one-year period that begins on January 1 of that year. A report under this subsection must include a copy of each report that is required of the health care facility under (c) of this section for the one-year period that begins on January 1 of the year the excessive declaration under this subsection occurs.

* **Sec. 3.** AS 18.20.420 is amended to read:

Sec. 18.20.420. Health care facility complaint process for overtime work by nurses or certified nurse aides. A health care facility shall provide for an anonymous process by which a patient, [OR] a nurse, or a certified nurse aide may make a complaint about staffing levels and patient safety that relate to overtime work by nurses or certified nurse aides and to limitations on overtime work by nurses or certified nurse aides under AS 18.20.400.

* **Sec. 4.** AS 18.20.440 is amended to read:

Sec. 18.20.440. 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 or certified nurse aide for exercising rights under AS 18.20.400 - 18.20.499 or for the good faith reporting of an alleged violation of

AS 18.20.400 - 18.20.499.

* **Sec. 5.** AS 18.20.450(a) is amended to read:

(a) A health care facility shall file with the division of labor standards and safety, Department of Labor and Workforce Development, a semiannual report on a form provided by the department. 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 or certified nurse aide employed by the health care facility or under contract with the health care facility, the number of overtime hours worked and the number of hours the nurse or certified nurse aide was on call. A health care facility that does not employ a nurse or certified nurse aide who worked overtime hours or who was on call during the reporting period is not required to describe hours worked as overtime and on-call hours for individual nurses or certified nurse aides but may instead complete the report by stating on the form that there are no reportable hours.

* **Sec. 6.** AS 18.20.460 is amended to read:

Sec. 18.20.460. Provisions not applicable to nurses or certified nurse aides employed in federal or tribal facilities. The provisions of AS 18.20.400 - 18.20.499 do not apply to a nurse or certified nurse aide employed in a health care facility that is operated by

(1) the federal government; or

(2) a tribal organization as defined in 25 U.S.C. 450b.

* **Sec. 7.** AS 18.20.499(4) is amended to read:

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

* **Sec. 8.** AS 18.20.499(5) is amended to read:

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

* **Sec. 9.** AS 18.20.499 is amended by adding a new paragraph to read:

- 1 (7) "certified nurse aide" means a person who is certified as a nurse
- 2 aide by the Board of Nursing under AS 08.68.