

HB

50



Alaska State Legislature

Representative Peggy Wilson
House District 2

MEMORANDUM

HB 50 Version M Changes:

1. **Concern:** Rural hospitals may face more difficulty than urban facilities in complying with the HB 50 requirement

Mitigation 1: Added new exemption, "Temporary nurse staffing emergency"

- 30 day duration.
- Report describing efforts to staff the facility required.
- Report must be filed with DOL
 - i. Limit to 2 reports in 6 months or 3 in 1 year or the reports must be sent to the Legislature as well. (pg 4, line 19-31, pg 5, line1-3)

Mitigation 2: Unforeseen weather condition added. (pg 3, line 11-18)

Mitigation 3: Rural community is defined. (pg 8 line15-21)

2. **Concern:** Nurses would leave surgical units or other units while procedures or surgeries are ongoing.

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)

3. **Concern:** Specialized work schedules for weekends used at North Star Behavioral Health would be a problem

Mitigation: This specific practice has been exempted. (pg 4, line 1-15)

4. **Concern:** On call hours could require a nurse to work beyond the maximum 14 consecutive hour limit.

Mitigation: An 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 21-24)



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5. **Concern:** The 80 limitation for 14 days was not flexible.

Mitigation: that limitation has been deleted

6. **Concern:** There are potential legal problems with jurisdiction.

Mitigation: The federal and Native facilities have been exempted. (pg. 7, line 13-17)

7. **Concern:** Reporting Requirements for facilities that do not use mandatory overtime are too arduous.

Mitigation: Allow a facility to submit a statement that there are no hours to report. (pg 7, line 9-10)

Two other changes were made to the bill: Facilities will be required to post a sign describing these statutes. (pg 7, line 18-23) The one hour exemption to find a replacement nurse has been extended to be more flexible (pg 4, line 16-18)

26-LS0274\M

Wayne

4/14/09

CS FOR HOUSE BILL NO. 50()

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SIXTH LEGISLATURE - FIRST 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; or

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

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

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

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

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

31 (3) a nurse on duty in overtime status

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

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

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

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

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

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

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

31 (7) a nurse who

1 (A) is employed

2 (i) at a psychiatric treatment hospital that treats only
3 adolescents and children;

4 (ii) at a residential psychiatric treatment center under
5 AS 18.07.111 or AS 47.12.990; or

6 (iii) at a secure residential psychiatric treatment center
7 under AS 47.32.900;

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

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

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

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

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

29 (2) may not exceed 30 days.

30 (b) Immediately after declaring a temporary nurse staffing emergency under
31 (a) of this section, a health care facility shall file with the division of labor standards

1 and safety, Department of Labor and Workforce Development, a report that includes a
2 copy of the signed writing required under (a) of this section. A report under this
3 subsection is a public document.

4 (c) In addition to the requirements of (a) and (b) of this section, a health care
5 facility shall notify the legislature immediately by delivery of a written report to the
6 Alaska Legislative Council each time the facility declares a temporary nurse staffing
7 emergency under AS 18.20.400(c) that exceeds two occurrences in a six-month period
8 that begins on January 1 or July 1 of the year in which the declaration occurs, or three
9 occurrences in the one-year period that begins on January 1 of that year. A report
10 under this subsection must include a copy of each report that is required of the health
11 care facility under (b) of this section for the one-year period that begins on January 1
12 of the year the excessive declaration under this subsection occurs.

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

18 **Sec. 18.20.430. Enforcement, offenses, and penalties.** (a) The commissioner
19 shall administer AS 18.20.400 - 18.20.499 and adopt regulations for implementing and
20 enforcing AS 18.20.400 - 18.20.499.

21 (b) A complaint alleging a violation of AS 18.20.400 - 18.20.499 must be filed
22 with the commissioner within 30 days after the date of the alleged violation. The
23 commissioner shall provide a copy of the complaint to the health care facility named
24 in the filing within three business days after receiving the complaint.

25 (c) If the commissioner finds that a health care facility has knowingly violated
26 an overtime provision of AS 18.20.400 - 18.20.499, the following civil penalties shall
27 apply:

28 (1) for a first violation of AS 18.20.400 - 18.20.499, the commissioner
29 shall reprimand the health care facility;

30 (2) for a second violation of AS 18.20.400 - 18.20.499 within 12
31 months, the commissioner shall reprimand the health care facility and assess a penalty

1 of \$500;

2 (3) for a third violation of AS 18.20.400 - 18.20.499 within 12 months,
3 the commissioner shall reprimand the health care facility and assess a penalty of not
4 less than \$2,500 but not more than \$5,000;

5 (4) for each violation of AS 18.20.400 - 18.20.499 after a third
6 violation of AS 18.20.400 - 18.20.499 within 12 months, the commissioner shall
7 reprimand the health care facility and assess a penalty of not less than \$5,000 but not
8 more than \$25,000.

9 (d) As an employer, a health care facility violates an overtime provision of
10 AS 18.20.400 - 18.20.499 "knowingly" when the facility is either aware that its
11 conduct is of a nature prohibited by the overtime provision or aware that the
12 circumstances described in the overtime prohibition exist; however, when knowledge
13 of the existence of a particular fact is required to establish that the violation was
14 knowing, that knowledge exists when the facility is aware of a substantial probability
15 of its existence, unless the facility reasonably believes it does not exist.

16 **Sec. 18.20.440. Prohibition of retaliation.** A health care facility may not
17 discharge, discipline, threaten, discriminate against, penalize, or file a report with the
18 Board of Nursing against a nurse for exercising rights under AS 18.20.400 - 18.20.499
19 or for the good faith reporting of an alleged violation of AS 18.20.400 - 18.20.499.

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

30 **Sec. 18.20.460. Report requirements.** (a) A health care facility shall file with
31 the division of labor standards and safety, Department of Labor and Workforce

1 Development, a semiannual report on a form provided by the department. The report
2 for the six-month period ending June 30 must be filed before the following August 1,
3 and the report for the six-month period ending December 31 must be filed before the
4 following February 1. The report must include, for each nurse employed by the health
5 care facility or under contract with the health care facility, the number of overtime
6 hours worked and the number of hours the nurse was on call. A health care facility that
7 does not employ a nurse who worked overtime hours or who was on call during the
8 reporting period is not required to describe hours worked as overtime and on-call
9 hours for individual nurses but may instead complete the report by stating on the form
10 that there are no reportable hours.

11 (b) A primary care outpatient facility is not subject to the reporting
12 requirements of (a) of this section.

13 **Sec. 18.20.470. Provisions not applicable to nurses employed in federal or**
14 **tribal facilities.** The provisions of AS 18.20.400 - 18.20.499 do not apply to a nurse
15 employed in a health care facility that is operated by

- 16 (1) the federal government; or
- 17 (2) a tribal organization as defined in 25 U.S.C. 450b.

18 **Sec. 18.20.480. Notice to employees.** A health care facility shall post and
19 maintain, in places readily accessible to individuals in the service of the health care
20 facility, printed statements that describe employee rights and employer obligations
21 under AS 18.20.400 - 18.20.499 and regulations adopted under AS 18.20.430. The
22 commissioner shall supply the printed statements to a health care facility without cost
23 to the facility.

24 **Sec. 18.20.499. Definitions.** In AS 18.20.400 - 18.20.499,

- 25 (1) "commissioner" means the commissioner of labor and workforce
26 development;
- 27 (2) "health care facility" means a private, municipal, or state hospital;
28 independent diagnostic testing facility; primary care outpatient facility; skilled nursing
29 facility; kidney disease treatment center, including freestanding hemodialysis units;
30 intermediate care facility; ambulatory surgical facility; Alaska Pioneers' Home or
31 Alaska Veterans' Home administered by the Department of Health and Social Services

1 under AS 47.55; correctional facility owned or administered by the state; private,
2 municipal, or state facility employing one or more public health nurses; long-term care
3 facility; psychiatric hospital; residential psychiatric treatment center, as defined in
4 AS 18.07.111 or AS 47.32.900; secure residential psychiatric treatment center under
5 AS 47.32.990; juvenile detention facility; juvenile detention home, juvenile work
6 camp, or treatment facility as defined in AS 47.12.990;

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

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

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

15 (6) "rural community" means a village or city that has a population of
16 less than 10,000, as determined by the Department of Labor and Workforce
17 Development, and is in

18 (A) the unorganized borough; or

19 (B) an organized borough that has a population of less than
20 25,000, as determined by the Department of Labor and Workforce
21 Development.

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

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

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

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



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.

26-LS0274-C
Wayne
3.28.09

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:**

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8 direct patient care be available to meet the needs of patients;

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10 practical nurses who work unnecessarily long hours in health care facilities;

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12 because of workplace stresses, long work hours, and depreciation of their essential role in the
13 delivery of quality and direct patient care;

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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;

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(3) a nurse on duty in overtime status

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

(B) because of an unforeseen emergency situation that could jeopardize patient safety; in this subparagraph, "unforeseen emergency situation" means an unusual, unpredictable, or unforeseen situation caused by an act of terrorism, disease outbreak, life-threatening circumstance, 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;

(C) because the health care facility has a scheduling problem caused by unforeseen weather conditions that prevent a second nurse from arriving at the facility to relieve the nurse on duty; in this subparagraph, "unforeseen weather conditions" means unusual, unpredictable, or unforeseen weather so extreme as to impair travel to the health care facility, but does not include a situation in which the health care 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) at a health care facility located in a rural community that declares a temporary nurse staffing emergency under AS 18.20.410;

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

(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;

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

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

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

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

24 (2) may not exceed 30 days.

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

30 (c) In addition to the requirements of (a) and (b) of this section, a health care
31 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
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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.

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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, as determined by the

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Department of Labor and Workforce Development;

(B) is in the unorganized borough; or

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

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

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

* Sec. 4. AS 18.20.460, 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.

CS FOR HOUSE BILL NO. 50(HSS)
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-SIXTH LEGISLATURE - FIRST SESSION

BY THE HOUSE HEALTH AND SOCIAL SERVICES COMMITTEE

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; or

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

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

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

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

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

31 (3) a nurse on duty in overtime status

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

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

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

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

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

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

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

31 (7) a nurse who

1 (A) is employed

2 (i) at a psychiatric treatment hospital that treats only
3 adolescents and children;

4 (ii) at a residential psychiatric treatment center under
5 AS 18.07.111 or AS 47.12.990; or

6 (iii) at a secure residential psychiatric treatment center
7 under AS 47.32.900;

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

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

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

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

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

29 (2) may not exceed 30 days.

30 (b) Immediately after declaring a temporary nurse staffing emergency under
31 (a) of this section, a health care facility shall file with the division of labor standards

1 and safety, Department of Labor and Workforce Development, a report that includes a
2 copy of the signed writing required under (a) of this section. A report under this
3 subsection is a public document.

4 (c) In addition to the requirements of (a) and (b) of this section, a health care
5 facility shall notify the legislature immediately by delivery of a written report to the
6 Alaska Legislative Council each time the facility declares a temporary nurse staffing
7 emergency under AS 18.20.400(c) that exceeds two occurrences in a six-month period
8 that begins on January 1 or July 1 of the year in which the declaration occurs, or three
9 occurrences in the one-year period that begins on January 1 of that year. A report
10 under this subsection must include a copy of each report that is required of the health
11 care facility under (b) of this section for the one-year period that begins on January 1
12 of the year the excessive declaration under this subsection occurs.

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

18 **Sec. 18.20.430. Enforcement, offenses, and penalties.** (a) The commissioner
19 shall administer AS 18.20.400 - 18.20.499 and adopt regulations for implementing and
20 enforcing AS 18.20.400 - 18.20.499.

21 (b) A complaint alleging a violation of AS 18.20.400 - 18.20.499 must be filed
22 with the commissioner within 30 days after the date of the alleged violation. The
23 commissioner shall provide a copy of the complaint to the health care facility named
24 in the filing within three business days after receiving the complaint.

25 (c) If the commissioner finds that a health care facility has knowingly violated
26 an overtime provision of AS 18.20.400 - 18.20.499, the following civil penalties shall
27 apply:

28 (1) for a first violation of AS 18.20.400 - 18.20.499, the commissioner
29 shall reprimand the health care facility;

30 (2) for a second violation of AS 18.20.400 - 18.20.499 within 12
31 months, the commissioner shall reprimand the health care facility and assess a penalty

1 of \$500;

2 (3) for a third violation of AS 18.20.400 - 18.20.499 within 12 months,
3 the commissioner shall reprimand the health care facility and assess a penalty of not
4 less than \$2,500 but not more than \$5,000;

5 (4) for each violation of AS 18.20.400 - 18.20.499 after a third
6 violation of AS 18.20.400 - 18.20.499 within 12 months, the commissioner shall
7 reprimand the health care facility and assess a penalty of not less than \$5,000 but not
8 more than \$25,000.

9 (d) As an employer, a health care facility violates an overtime provision of
10 AS 18.20.400 - 18.20.499 "knowingly" when the facility is either aware that its
11 conduct is of a nature prohibited by the overtime provision or aware that the
12 circumstances described in the overtime prohibition exist; however, when knowledge
13 of the existence of a particular fact is required to establish that the violation was
14 knowing, that knowledge exists when the facility is aware of a substantial probability
15 of its existence, unless the facility reasonably believes it does not exist.

16 **Sec. 18.20.440. Prohibition of retaliation.** A health care facility may not
17 discharge, discipline, threaten, discriminate against, penalize, or file a report with the
18 Board of Nursing against a nurse for exercising rights under AS 18.20.400 - 18.20.499
19 or for the good faith reporting of an alleged violation of AS 18.20.400 - 18.20.499.

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

30 **Sec. 18.20.460. Report requirements.** (a) A health care facility shall file with
31 the division of labor standards and safety, Department of Labor and Workforce

1 Development, a semiannual report on a form provided by the department. The report
 2 for the six-month period ending June 30 must be filed before the following August 1,
 3 and the report for the six-month period ending December 31 must be filed before the
 4 following February 1. The report must include, for each nurse employed by the health
 5 care facility or under contract with the health care facility, the number of overtime
 6 hours worked and the number of hours the nurse was on call. A health care facility that
 7 does not employ a nurse who worked overtime hours or who was on call during the
 8 reporting period is not required to describe hours worked as overtime and on-call
 9 hours for individual nurses but may instead complete the report by stating on the form
 10 that there are no reportable hours.

11 (b) A primary care outpatient facility is not subject to the reporting
 12 requirements of (a) of this section.

13 **Sec. 18.20.470. Provisions not applicable to nurses employed in federal or**
 14 **tribal facilities.** The provisions of AS 18.20.400 - 18.20.499 do not apply to a nurse
 15 employed in a health care facility that is operated by

16 (1) the federal government; or

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

18 **Sec. 18.20.480. Notice to employees.** A health care facility shall post and
 19 maintain, in places readily accessible to individuals in the service of the health care
 20 facility, printed statements that describe employee rights and employer obligations
 21 under AS 18.20.400 - 18.20.499 and regulations adopted under AS 18.20.430. The
 22 commissioner shall supply the printed statements to a health care facility without cost
 23 to the facility.

24 **Sec. 18.20.499. Definitions.** In AS 18.20.400 - 18.20.499,

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

27 (2) "health care facility" means a private, municipal, or state hospital;
 28 independent diagnostic testing facility; primary care outpatient facility; skilled nursing
 29 facility; kidney disease treatment center, including freestanding hemodialysis units;
 30 intermediate care facility; ambulatory surgical facility; Alaska Pioneers' Home or
 31 Alaska Veterans' Home administered by the Department of Health and Social Services

1 under AS 47.55; correctional facility owned or administered by the state; private,
 2 municipal, or state facility employing one or more public health nurses; long-term care
 3 facility; psychiatric hospital; residential psychiatric treatment center, as defined in
 4 AS 18.07.111 or AS 47.32.900; secure residential psychiatric treatment center under
 5 AS 47.32.990; juvenile detention facility; juvenile detention home, juvenile work
 6 camp, or treatment facility as defined in AS 47.12.990;

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

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

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

15 (6) "rural community" means a village or city that has a population of
 16 less than 10,000, as determined by the Department of Labor and Workforce
 17 Development, and is in

18 (A) the unorganized borough; or

19 (B) an organized borough that has a population of less than
 20 25,000, as determined by the Department of Labor and Workforce
 21 Development.

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

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

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

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

26-LS0274\W
Wayne
4/13/09

CS FOR HOUSE BILL NO. 50()
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-SIXTH LEGISLATURE - FIRST 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; or

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

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

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

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

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

31 (3) a nurse on duty in overtime status

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

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

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

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

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

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

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

31 (7) a nurse who

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(A) is employed

(i) at a psychiatric treatment hospital that treats only adolescents and children;

(ii) at a residential psychiatric treatment center under AS 18.07.111 or AS 47.12.990; or

(iii) at a secure residential psychiatric treatment center under AS 47.32.900;

(B) voluntarily agrees to work a 16-hour shift for the period between 5:00 p.m. on a Friday and 8:00 a.m. on the Monday that immediately follows 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; and

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

(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

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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 Alaska Legislative Council each time the facility declares a temporary nurse staffing emergency under AS 18.20.400(c) that exceeds two occurrences in a six-month period that begins on January 1 or July 1 of the year in which the declaration occurs, or three occurrences 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 (b) of this section for the one-year period that begins on January 1 of the year the excessive declaration under this subsection occurs.

Sec. 18.20.420. 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. 18.20.430. Enforcement, offenses, and penalties. (a) The commissioner shall administer AS 18.20.400 - 18.20.469 and adopt regulations for implementing and enforcing AS 18.20.400 - 18.20.469.

(b) A complaint alleging a violation of AS 18.20.400 - 18.20.469 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 - 18.20.469, the following civil penalties shall apply:

- (1) for a first violation of AS 18.20.400 - 18.20.469, the commissioner shall reprimand the health care facility;
- (2) for a second violation of AS 18.20.400 - 18.20.469 within 12 months, the commissioner shall reprimand the health care facility and assess a penalty

1 of \$500;

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

5 (4) for each violation of AS 18.20.400 - 18.20.469 after a third
6 violation of AS 18.20.400 - 18.20.469 within 12 months, the commissioner shall
7 reprimand the health care facility and assess a penalty of not less than \$5,000 but not
8 more than \$25,000.

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

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

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

30 **Sec. 18.20.460. Report requirements.** (a) A health care facility shall file with
31 the division of labor standards and safety, Department of Labor and Workforce

1 Development, a semiannual report on a form provided by the department. The report
2 for the six-month period ending June 30 must be filed before the following August 1,
3 and the report for the six-month period ending December 31 must be filed before the
4 following February 1. The report must include, for each nurse employed by the health
5 care facility or under contract with the health care facility, the number of overtime
6 hours worked and the number of hours the nurse was on call. A health care facility that
7 does not employ a nurse who worked overtime hours or who was on call during the
8 reporting period is not required to provide overtime hours worked or ~~hours on call~~ for
9 individual nurses but may instead complete the report by stating on the form that there
10 are no reportable hours.

11 (b) A primary care outpatient facility is not subject to the reporting
12 requirements of (a) of this section.

13 **Sec. 18.20.465. Provisions not applicable to nurses employed in federal or**
14 **tribal facilities.** The provisions of AS 18.20.400 - 18.20.469 do not apply to a nurse
15 employed in a health care facility that is operated by

16 (1) the federal government; or

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

18 **Sec. 18.20.467. Notice to employees.** A health care facility shall post and
19 maintain, in places readily accessible to individuals in the service of the health care
20 facility, printed statements that describe employee rights and employer obligations
21 under AS 18.20.400 - 18.20.469 and regulations adopted under AS 18.20.430. The
22 commissioner shall supply the printed statements to a health care facility without cost
23 to the facility.

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

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

27 (2) "health care facility" means a private, municipal, state, or state
28 hospital; independent diagnostic testing facility; primary care outpatient facility;
29 skilled nursing facility; kidney disease treatment center, including freestanding
30 hemodialysis units; intermediate care facility; ambulatory surgical facility; Alaska
31 Pioneers' Home or Alaska Veterans' Home administered by the Department of Health

1 and Social Services under AS 47.55; correctional facility owned or administered by
2 the state; private, municipal, or state facility employing one or more public health
3 nurses; long-term care facility; psychiatric hospital; residential psychiatric treatment
4 center, as defined in AS 18.07.111 or AS 47.32.900; secure residential psychiatric
5 treatment center under AS 47.32.990; juvenile detention facility; juvenile detention
6 home, juvenile work camp, or treatment facility as defined in AS 47.12.990;

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

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

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

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

16 (A) has a population of less than 10,000, as determined by the
17 Department of Labor and Workforce Development;

18 (B) is in the unorganized borough; or

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

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

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

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

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



Alaska State Legislature

Representative Peggy Wilson
House District 2

SPONSOR STATEMENT HB 50

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

Nurses are working excessive amounts of hours without adequate rest. This creates an unsafe work environment for patients and nurses. Mandatory overtime is one of the main reasons nurses leave nursing. Recent studies indicate that one in five nurses is considering leaving the profession. When polled on their reasons for leaving, mandatory overtime is always listed in the top ten. The purpose of HB 50 is to promote better patient and nurse safety and to create an environment that will keep nurses at the bedside.

HB 50 would prohibit mandatory overtime. Mandatory overtime hours are those hours above an agreed upon, predetermined, regularly scheduled shift, which the employer makes compulsory (as opposed to voluntary). The threat of reprisals includes but is not limited to discharge, discipline, demotion or assignment to unattractive tasks or work shifts or in some cases licensure removal, retaliatory reporting, and charges of “patient abandonment”.

The bill does not ban overtime. The bill allows nurses to work up to 14 consecutive hours, but then requires a rest period of at least 10 hours. Another provision provides a nurse cannot be forced to work more than 80 hours in a 14-day period. Nurses can voluntarily agree to exceed the 80-hour limit, so long as they don't work more than 14 consecutive hours without the 10-hour rest period.

HB 50 allows for a number of exceptions to these requirements, including school nurses on field trips, nurses working on medivac flights, and if needed, for an unforeseen emergency that could jeopardize patient safety such as natural disasters or disease outbreaks.

There are 15 other states that have adopted similar requirements, including Washington, Oregon and California. Most of these versions restrict nurses to only 12 consecutive hours, with a mandated rest period of 12 hours. HB 50 extended those requirements to a 14-hour limit with a 10-hour rest period to provide additional flexibility to our hospitals, particularly those operating in smaller communities.

HB 50 addresses these problems in a reasonable and balanced manner, while making a work environment safer. It will also help to retain nurses instead of giving them reason leave the state or retire early.

ALASKA STATE LEGISLATURE

Interim:
P.O. Box 109
Wrangell, AK 99929
Phone: (907) 874-3088
Fax: (907) 874-3055



Session:
State Capitol, Room 406
Juneau, AK 99801-1182
Phone: (907) 465-3824
1-800-686-3824
Fax: (907) 465-3175

REPRESENTATIVE PEGGY WILSON
HOUSE DISTRICT 2

Sectional Analysis

House Bill 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.”

Section 1. Describes the intent and reasons for the Act.

Section 2. Defines the Act:

- the limitations on overtime for nurses,
- the process for complaints,
- the enforcement, offenses and penalties as they apply to mandatory overtime for nurses,
- prohibition of retaliation, and enforcement of the retaliation,
- the reporting requirements.
- the definitions of terms .

Section 3. Sets the reporting periods.

Section 4. Sets the effective date for sections 2 and 3 at July 1, 2009

Section 5. Sets effective date at Jan. 1, 2010.

ALASKA STATE LEGISLATURE

Interim:
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Session:
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REPRESENTATIVE PEGGY WILSON
HOUSE DISTRICT 2

Sectional Analysis

House Bill 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.”

Section 1. Describes legislative findings and intent for the Act. The purpose of this Act is to ensure public safety and assist with the retention of nurses at health care facilities by minimizing long working hours for nurses without adequate rest.

Section 2. This section addresses the major elements of the proposed legislation.

- Sec. 18.20.400(a) prohibits a health care facility from forcing 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.
- Sec. 18.20.400(b) requires nurses to receive not less than 10 consecutive hours of rest after working a predetermined and regularly scheduled shift.
- Sec. 18.20.400(c) lists 7 exceptions to the requirements of (a) & (b), including for school nurses, medivac flights, unforeseen emergencies that could jeopardize patient safety, and certain on-call situations. Voluntary overtime is permitted so long as it does not exceed more than 14 consecutive hours.
- Sec. 18.20.410 requires a health care facility to provide an anonymous process for complaints by a patient or a nurse about staffing levels or patient safety related to overtime work by nurses.
- Sec. 18.20.420 lays out a process for formal complaints by individuals against a health care facility that violates the provision of this Act, a mechanism to adjudicate these complaints involving the Department of Labor and Workforce Development, and a graduated schedule of penalties if it is determined that a violation has occurred.
- Sec. 18.20.430 provides an explicit prohibition against retaliation by a health care facility against a nurse who attempts to exercise their rights under the Act, or for the good faith reporting of an alleged violation.

ALASKA STATE LEGISLATURE

Interim:
P.O. Box 109
Wrangell, AK 99929
Phone: (907) 874-3088
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Session:
State Capitol, Room 406
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REPRESENTATIVE PEGGY WILSON HOUSE DISTRICT 2

- Sec. 18.20.445 establishes a semiannual reporting requirement for a health care facility to provide certain data relating to overtime and on-call activity for nurses.
- Sec. 18.20.449 provides a number of definitions related to the Act.

Section 3. Sets the reporting period for this first report required under sec. 2 of this Act. The report for the last six months of 2009 will be due on February 1, 2010.

Section 4. Sets July 1, 2009 as the effective date for the provisions dealing with the reporting requirements under AS 18.20.445.

Section 5. Sets an effective date of January 1, 2010 for all other provisions of the Act.

FISCAL NOTE

STATE OF ALASKA
2009 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: CSHB 50(HSS)
 () Publish Date: _____

Identifier (file name): HB050CS(HSS)-DOLWD-WH-04-15-09 Dept. Affected: Labor and Workforce Development
 Title: Limit Overtime for Registered Nurses RDU: Labor Standard & Safety
 Component: Wage and Hour
 Sponsor: Representatives Wilson, Gara, Tuck, Petersen, Lynn, et al
 Requester: House Health and Social Services Component Number: 345

Expenditures/Revenues (Thousands of Dollars)

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

	Appropriation Required	Information						
		FY 2010	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015
OPERATING EXPENDITURES								
Personal Services	73.6		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	3.0
Contractual	18.9		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	0.5
Equipment								
Land & Structures								
Grants & Claims								
Miscellaneous								
TOTAL OPERATING	99.3	0.0	96.0	96.0	97.3	96.0	96.0	96.0

CAPITAL EXPENDITURES								
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CHANGE IN REVENUES ()								
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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	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	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 9,000 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
 Division: Labor Standard & Safety
 Approved by: Click Bishop, Commissioner
 Agency: Department of Labor and Workforce Development

Phone 465-4855
 Date/Time 4/15/09 7:57 AM
 Date 4/15/09

FISCAL NOTE

STATE OF ALASKA
2009 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: HB 50
 () Publish Date: _____

Identifier (file name): HB050-DOLWD-WH-03-06-09 Dept. Affected: Labor and Workforce Development
 Title: Limit Overtime for Registered Nurses RDU: Labor Standard & Safety
 Component: Wage and Hour
 Sponsor: Representatives Wilson, Gara, Tuck, Petersen, Lynn, et al
 Requester: House Health and Social Services Component Number: 345

Expenditures/Revenues (Thousands of Dollars)

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

	Appropriation Required	Information						
		FY 2010	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015
OPERATING EXPENDITURES								
Personal Services	73.6		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	3.0
Contractual	18.9		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	0.5
Equipment								
Land & Structures								
Grants & Claims								
Miscellaneous								
TOTAL OPERATING	99.3	0.0	96.0	96.0	97.3	96.0	96.0	96.0

CAPITAL EXPENDITURES								
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CHANGE IN REVENUES ()								
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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	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	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
 Division: Labor Standard & Safety
 Approved by: Click Bishop, Commissioner
 Agency: Department of Labor and Workforce Development

Phone 465-4855
 Date/Time 3/6/09 1:06 PM
 Date 3/6/09

FISCAL NOTE

STATE OF ALASKA
2009 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: HB050
 () Publish Date: _____

Identifier (file name): HB050-DHSS-PH-03-09-09 Dept. Affected: Health & Social Services
 Title Limit Overtime for Registered Nurses RDU Alaska Pioneer Homes
 Component Pioneers Homes
 Sponsor Wilson
 Requester House HSS Component Number _____

Expenditures/Revenues (Thousands of Dollars)

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

	Appropriation Required	Information						
		FY 2010	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015
OPERATING EXPENDITURES								
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								
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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)

HB 50 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 HB 50 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 3/9/09 8:00 AM

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

FISCAL NOTE

STATE OF ALASKA
2009 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: HB050
 () Publish Date: _____

Identifier (file name): HB050-DHSS-N-03-09-09 Dept. Affected: Health & Social Services
 Title Limit Overtime for Registered Nurses RDU Public Health
 Component Nursing
 Sponsor Wilson
 Requester House HSS Component Number _____

Expenditures/Revenues (Thousands of Dollars)

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

	Appropriation Required	Information						
		FY 2010	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015
OPERATING EXPENDITURES								
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	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	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 employees, 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 3/9/09 8:00 AM
 Approved by: Alison Elgee, Assistant Commissioner Date 3/9/2009
DHSS Finance & Management Services

Matthew Johnson

From: Rebecca Rooney
Sent: Thursday, February 12, 2009 10:30 AM
To: Matthew Johnson
Subject: hb 50 testifierst.doc
Attachments: hb 50 testifierst.doc

Hi Matt,

Here is a list of potential testifiers for a hearing in House HSS for the Nurses Mandatory Overtime bill, HB 50.

Let me know if there is anything else you need. One thing on your list is a Fiscal note. Since yours is the first committee you will be the one to request it. In the past the only fiscal note came from Labor.

Cheers,
Becky

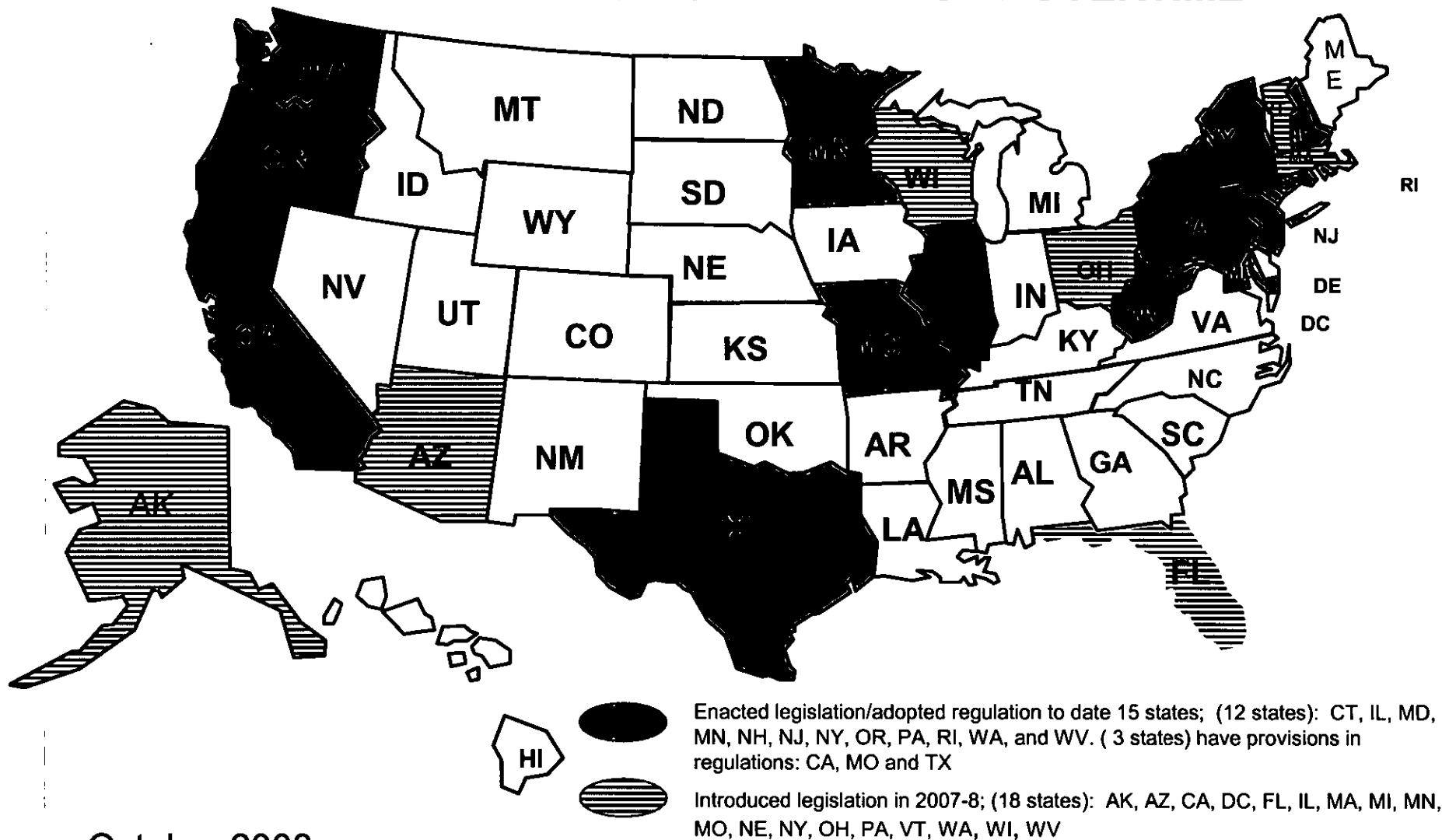

Only Department Affected

HB 50 Witnesses, House HSS

Debbie Thompson, BSN, RN, Executive Director AaNA - Anchorage
Nancy Davis, RN, MS - Board President - Juneau - might be out of town
Patricia Senner, MS, RN, ANP - AaNA - Legislative Chair Donna Phillips,
BSN, RN - Anchorage
Kathleen Gettys, RN, BSN, BA - Eagle River
Paul Mordini, RNC, BSN, MS - Eagle River
Lynn Hartz, MSN, FNP-BC - Anchorage
Mary Stackhouse, RN, BSN - Anchorage
Rebecca Bolling, RN - Ketchikan
Susan Walsh, RN - Ketchikan Tina Gonzales, Valdez
Ray Southwell, RN - Nikiski

The American Nurses Association's Nationwide State
Legislative Agenda

PROHIBITION OF MANDATORY OVERTIME



October 2008

Position Statements

Assuring Patient Safety: The Employers' Role in Promoting Healthy Nursing Work Hours for Registered Nurses in All Roles and Settings

Effective Date: December 8, 2006
Status: New Position Statement
Originated by: Congress on Nursing Practice and Economics
Adopted by: ANA Board of Directors

Purpose: This position statement articulates the American Nurses Association's position with regard to patient¹ safety and encourages employers of registered nurses² to establish policies and procedures that promote healthy nursing work hours and patterns that do not extend beyond the limits of safety for both nurses and patients.

ANA Position: Given the well-documented relationship between nurse fatigue and an increased risk of nurse error with the potential for compromising patient care and safety, it is the position of the American Nurses Association that all employers of registered nurses should ensure sufficient system resources to provide the individual registered nurse in all roles and settings with:

1. a work schedule that provides for adequate rest and recuperation between scheduled work; and
2. sufficient compensation and appropriate staffing systems that foster a safe and healthful environment in which the registered nurse does not feel compelled to seek supplemental income through overtime, extra shifts, and other practices that contribute to worker fatigue.

It is intended that this position statement be used in conjunction with ANA's position statement on the responsibility of the individual registered nurse to make decisions consistent with her or his ethical obligation to decline work assignments when fatigue may compromise her or his ability to deliver safe patient care, "*Assuring Patient Safety: Registered Nurses' Responsibility in All Roles and Settings to Guard Against Fatigue*" (in press).

¹ ANA, in its *Nursing's Social Policy Statement*, "recognized the importance of clearly identifying the recipients of professional nursing care, be they individuals, groups, families, communities, or populations." The *Social Policy Statement* notes that "[t]o date, professional nursing has not yet selected ... the term best depicting the healthy or ill recipients of professional nursing care." Therefore the term "patient" was selected to be used "throughout the text to provide consistency and brevity" ... and readers are asked "to keep in mind that the breadth of nursing practice always includes the various recipients of care," be they the individual, the group, the family, the community, or the population. *Nursing's Social Policy Statement (2nd edition)*, 2003, American Nurses Association, p. v & 22.

² While ANA's membership is limited to registered nurses, it is ANA's belief that employers of health care personnel have a similar obligation to these employees to establish policies and procedures regarding employee fatigue and patient safety.

History/Previous Position Statements: In 2000, the American Nurses Association (ANA) House of Delegates adopted an action "Opposing the Use of Mandatory Overtime as a Staffing Solution" (CNPE-2). Embedded in this and other statements on related issues, ANA has consistently reiterated its position that registered nurses have a responsibility to reject any work assignment that puts patients or themselves in jeopardy (1995 ANA Position Statement, "*The Right to Accept or Reject an Assignment*"). Further, ANA's consistent position has been that such a principled rejection does not constitute "patient abandonment;" on the contrary, it is the only ethical option for the fatigued nurse.

Then, in 2004, the House of Delegates adopted a resolution entitled "Transforming the Work Environment for Nurses," based largely on the recommendations set out in the exhaustive Institute of Medicine (IOM) report of the same year, *Keeping Patients Safe: Transforming the Work Environment of Nurses*. The report described the central role of registered nurses in protecting patient safety and achieving better patient outcomes; and it discussed the frequent mismanagement of the nurse's work environment that often threatens these integral contributions. Among those issues highlighted in the report, the IOM focused on institutional support and structures for maintaining nurse staffing at levels sufficient to avoid patient safety issues cause by nurse fatigue.

The ANA 2005 House of Delegates overwhelmingly passed a resolution regarding the "Implications of Fatigue on Patient and Nurse Safety." That resolution built on the above described significant work that ANA has pursued for several years linking patient safety with a host of workplace environmental and staffing factors that affect the number of hours registered nurses work. It acknowledged the impact of nurse fatigue on patient safety, quality of care and nurse safety and urged individual nurses, nurse managers, nurse administrators, employers of nurses, trustees and other stakeholders to fulfill their legal and ethical obligations to assure that registered nurses' work hours and patterns do not extend beyond the limits of safety for both nurses and patients.

Supportive Material: The 2004 IOM report, *Keeping Patients Safe: Transforming the Work Environment of Nurses*, recognized that creating a healthy work environment for registered nurses that is most conducive to patient safety will require fundamental change within a health care organization.

Strong evidence links prolonged work hours (more than 12 hours in a 24-hour span, or more than 60 hours in 7 days), rotating shifts and insufficient breaks to:

- slowed reaction time,
- lapses of attention to detail,
- errors of omission,
- compromised problem solving,
- reduced motivation, and
- decreased energy for successful completion of required tasks (IOM, 2004, p.12).

Further, Rogers, Hwang, Scott, Aiken, and Dinges (2004) found that the likelihood of making an error was three times higher when nurses worked shifts lasting 12.5 hours or more, and that

nurses, indeed, worked longer than scheduled on a daily basis, and generally worked more than 40 hours a week. Research examining consecutive hours worked by medical interns and residents also found that after extended work shifts there was an increased risk for both patient errors while at work and motor vehicle crashes leaving work (Landrigan, et al., 2004; Barger, et al., 2005).

Recent research with 2,273 RNs by Trinkoff, Geiger-Brown, Brady, Lipscomb and Muntaner (2006) documented that more than half of the hospital nurses in their study typically worked 12 hours or more per day and more than 50 hours per week. Further, nurses were likely to work many days consecutively, without sufficient rest between shifts and during scheduled time off.

Excessive total hours worked puts nurses and patients at risk; in addition, *rotating* shifts can also threaten patient safety. Research by Circadian Technologies Incorporated has found that the number of accidents for all shift workers is 1.2 times greater than that for traditional workers and the resulting incremental cost to business is \$8.5 billion (BNA, 2003).

Given this risk, the individual nurse's ethical responsibility to consider her or his level of fatigue when deciding whether to accept a patient assignment is addressed in the ANA's complementary position statement, "*Registered Nurses' Responsibility in All Roles and Settings to Guard Against Working When Fatigued.*" In the present statement, "*Assuring Patient Safety: The Employers' Role in Promoting Healthy Nursing Work Hours for Registered Nurses in All Roles and Settings,*" ANA urges employers of registered nurses to acknowledge their responsibility to assure a safe workforce, and to initiate fundamental change in their staffing and salary policies so as to create incentives for a rested and safe nursing workforce.

At the institutional or organizational level, the risk that fatigue poses to both nurse and patient safety mandates that nurse managers and administrators actively promote changes in the work environment of nurses. Provision Six of *the Code of Ethics for Nurses with Interpretive Statements* clarifies:

The nurse participates in establishing, maintaining, and improving health care environments and conditions of employment conducive to the provision of quality health care and consistent with the values of the profession through individual and collective action (p. 20).

Interpretive Statement 6.3 further delineates the ethical responsibilities of nurse managers and administrators to take action to curtail extended work hours and insufficient rest time between shifts:

Acquiescing and accepting unsafe or inappropriate practices, even if the individual does not participate in the specific practice, is equivalent to condoning unsafe practice (p. 21).

Nurse managers and administrators, bound by this ethical code of practice, may feel torn by conflicting professional obligations. Hospitals and other health care entities, not similarly bound, are clearly under pressure to reduce expenses; the managers of these institutions and organizations may not recognize the connections between their budget and nurse fatigue. Their

response to market pressures has often been an "adhocracy" of registered nurse understaffing, patched with excessive overtime, expensive agency nurses and rotating shifts that further deteriorates working conditions for already overworked nurses, thereby threatening patient safety.

Administrators need to be educated to the larger costs to their institutions of nurse fatigue as well as the costs of excessive overtime and agency nurses. The most obvious cause-and-effect may be seen in the reduction of adverse patient outcomes when an adequate, appropriate, and *rested* nursing staff is available. Study after study has concluded that nursing care, specifically, and appropriate staffing in general, is central to improved patient outcomes. This directly affects the institution's bottom line.

For example, ANA's 2000 study, *Nurse Staffing and Patient Outcomes in the Inpatient Hospital Setting*, describes five adverse outcomes measures that respond favorably to adequate nurse staffing: hospital length of stay, nosocomial pneumonia, postoperative infections, pressure ulcers, and nosocomial urinary tract infections. Each of these might cost a hospital or health facility money that it would otherwise not spend. Appropriate nurse staffing that permits time for thorough patient assessment and timely interventions ultimately improves outcomes, and has the potential for significantly reducing these types of expensive risks.

Risks to nurses in the health care environment, only amplified by the fatigue factor, can similarly affect the cost of doing business for employers of nurses. Health care jobs are already among the most hazardous occupations. In a 2004 survey, the U.S. Bureau of Labor Statistics noted that, of the fourteen private industry sectors with the highest reported number of cases of injury or illness, three were in the health care and social assistance sector. In fact, "hospitals and nursing and residential care facilities have *led* [italics added] the list of industries reporting [the highest number of] cases for the past two years" (p. 8). The rate of illnesses experienced by workers in the hospital industry was almost three times that of workers in private industry as a whole.

Knowing all of this, and supported by the extensive research linking human fatigue with error, institutions that persist in policies supporting a culture where overwork, understaffing and underpay are the norm may ultimately find themselves facing extensive accountability for their short-sightedness. The consequence of institutional intractability is even more stark as the evidence accumulates specifically linking nurse fatigue with errors in clinical judgment that have the potential to harm patients or nurses themselves.

Employers may begin to experience the legal implications of the mounting research on fatigue, as well. For example, a registered nurse successfully claimed workers' compensation for injuries from a motor vehicle accident that occurred when she fell asleep while driving home after working back-to-back double shifts, at the behest of her manager and against her own judgment. The court ruled in her favor because it deemed the hospital's systematic abuse of overtime as a foreseeable and avoidable cause of the accident (*Deland v. Hutchings*, 1994). As hospitals and other health care institutions increasingly look to *institutional systems* to assure patient safety, as opposed to a model that only looks at individual responsibility, it is possible

that courts will follow the trend in finding institutional liability for those lapses in *institutional* policy that foreseeably result in harm to patients or staff.

Institutions also accrue the secondary costs of nurse fatigue that must be paid in time, and that ultimately affect the *entire* health care system. Clearly, nurse fatigue and the factors contributing to it are not isolated from the larger issues of health care workforce and access to care. In its 2001 report, "Nursing Workforce: Emerging Nurse Shortages Due to Multiple Factors," the US General Accountability Office cites "inadequate staffing, heavy workloads, the increased use of overtime, a lack of sufficient support staff, and the adequacy of wages" as key factors in the emerging registered nurse shortage (p. 2). When all the related factors are considered, fairer wages for registered nurses may be, at a minimum, cost-neutral for hospitals and other entities.

The drive for "organizational efficiency," when its proponents fail to balance it with other values, continues to backfire in industry after industry. Increasingly, businesses must balance the cost of assuring a rested workforce against the regrettable cost of *not* having rested workers. The shift and duty times of airline pilots and truck drivers are regulated for precisely these reasons. In health care, teaching hospitals can be denied their accreditation for graduate medical education if they routinely ignore resident work hour limits. Although the application of this logic has been slow to reach the rest of the health care community, employers need to make the connection between nurse fatigue and safety of both the patient and the nurse.

The management of hospitals and other healthcare entities must be accountable for making the changes necessary to align their rewards systems with their espoused value of high quality patient care and safety. Nursing can support this mission by generating specific recommendations as to what institutions can do differently to address the factors that contribute to nurse fatigue.

Several nursing specialty organizations have addressed how their members might best balance work and rest to optimize safety, and how their employers might support their doing so. The Association of periOperative Registered Nurses (AORN), an organizational affiliate of the American Nurses Association (ANA), offers several strategies in its 2005 Position Statement on Safe Work/On-Call Practices, to promote patient and perioperative personal safety. Those strategies that directly target action by institutions and organizational systems include:

- Perioperative Registered Nurses should not be required to provide direct patient care for more than 12 consecutive hours in 24 hours and not more than 60 hours in a seven-day period.
- Off-duty periods should be scheduled to provide for an uninterrupted eight-hour sleep cycle.
- Arrangements should be made to relieve a perioperative registered nurse who has worked on-call and is scheduled to work the following shift to allow for adequate off-duty recuperation time.
- The type of facility and possible number of sustained work hours should be taken into consideration when making on-call shift assignments.

- The individual's ability to be able to meet the potential work demands should be considered when making on call assignments.
- Employers should support perioperative registered nurses to change cultural attitudes so that fatigue is recognized as an unacceptable risk to patient and worker safety rather than a sign of their dedication to their job.

AORN's full position statement and guidance statement on Safe On-Call Practices in Perioperative Practices can be found on the AORN web site at the following link:
<http://www.aorn.org/about/positions/default.htm>.

The American Association of Critical Care Nurses has explored how "mental and physical fatigue can contribute to errors and 'near-misses' with medications and case-related procedures" in its position statement opposing mandatory overtime. Without the ability to resort to mandatory overtime, "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" (<http://www.aacn.org/AACN/pubpolicy.nsf/vwdoc/pmp>, ¶ 7).

A 2006 study by Scott, Rogers, Hwang and Zhang targeted at this critical care nursing population generally affirms earlier studies, showing respondents "worked longer [hours] than scheduled and for extended periods," and that "longer work duration increased the risk of error and near error and decreased nurses' vigilance" (p. 1). It also supports the IOM's recommendations to minimize the use of 12-hour shifts and to limit nurses' working hours to 12 consecutive hours during any one 24-hour period. The authors were particularly persuaded by the potentially dire consequences of a fatigue-induced mistake in critical care, where "patients are not only exposed to more medications and treatments than are patients in general care areas but are also seriously ill, with little natural resilience or ability to defend themselves from the consequences of healthcare mishaps" (Scott, 2006, p. 1).

This evidence, highlighting the detrimental effects of nurse fatigue on patient and nurse safety, as well as on institutional and organizational accountability, leads ANA to recommend the following actions for registered nurses, employers, researchers and educators.

Recommendations: As a means of implementing this position statement, the ANA recommends the following eleven specific actions:

Practicing Registered Nurses:

1. Individual registered nurses should consistently exercise their ethical obligations as articulated in the ANA's position statement on *Registered Nurses' Responsibility in All Roles and Settings to Guard Against Working When Fatigued* (ANA, in press).
2. Nurse managers and administrators have a responsibility to examine and institute scheduling practices that promote safe work hours, adequate break time, and minimal rotation of shifts.

Employers/Health Care Agencies:

3. All employers should provide fair compensation that encourages the elimination of the need for such strategies as excessive overtime or rotating shifts. The ANA recommends a thorough examination of overtime pay expenditures and a reassignment of those dollars toward both the additional staff necessary to eliminate overtime and subsequent increases in registered nurses' base compensation. These steps should be cooperatively pursued and negotiated in an open and equitable process that includes both registered nurses and healthcare administrators.
4. Registered nurses' salaries must be adjusted to appropriately reflect their education, training, experience and the value they add within the health care entity for which they work. In particular, "wage compression," or the stagnation of salary growth relatively early in a nurse's career, should be eliminated and experience rewarded so that the health care system retains its nursing workforce. Salaries should be such that registered nurses do not feel compelled to seek supplemental income through rotating shifts, overtime and other voluntary practices that contribute to worker fatigue.
5. All employers of health professionals should provide ongoing education to employees concerning the impact of consecutive and total hours worked and employee fatigue on patient safety, quality of care, and the personal safety of employees.
6. Employers should institute policies, including whistleblower protections, permitting the free exchange of ideas and information about staffing and quality of care issues among their staff without fear of reprisal or retribution.
7. Employers should adopt as official policy, the position that registered nurses have the right to accept or reject a work assignment based on fatigue; that such rejection does not constitute patient abandonment; and that registered nurses should not suffer adverse consequences in retaliation for rejecting in good faith a work assignment based on fatigue.
8. Employers should have a system in place for evaluating instances of registered nurses rejecting assignments in order to evaluate causes and effectiveness of staffing patterns.

Education:

9. Schools of Nursing should add to their curricula information on the impact of hours worked, rotating shifts, and neglecting to take meal and rest breaks on patient safety and harm to self and peers. In addition, the ethical obligation of the individual registered nurse to monitor fatigue and to decline assignments that put patients at risk should be

stressed, relying on Provisions and Interpretive Statements from the *Code of Ethics for Nurses* (ANA, 2001).

10. Academic education and training programs for health care administrators should include curricula content regarding the impact of nurse and health care worker fatigue on patient and staff safety, and the importance of supporting a healthy workplace for registered nurses and other employees.

Research:

11. ANA should partner with specialty nursing organizations and other stakeholders to assure that the following subjects are included on the research agendas of various funding entities:
 - Determinants of registered nurse fatigue
 - Impact of nurse fatigue on the health and well-being of nurses
 - Impact of registered nurse fatigue on patient safety
 - Patient classification/acuity systems
 - Staffing patterns and nursing-sensitive patient outcomes
 - Salaried registered nurse-staffing models
12. Schools of Nursing, as well as Schools of Public Health, Occupational Health, Health Services Research and Economics, should develop graduate research foci around the areas of patient acuity, nurse staffing patterns, nurse fatigue and quality of care.

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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.
- **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-day 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.

Patrick M. Nolan, D.O., F.A.C.E.

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Comments on SB 12 & HB 50: "An act relating to limitations on mandatory overtime for registered nurses and licensed practical nurses in health care facilities." Patient Safety Act

To Whom It May Concern:


Thank you for listening to my comments. As a physician, specializing in endocrinology, I am distressed at the physical alterations that can occur in an aging nursing workforce while their hours and demands steadily rise. It is no secret that the population of America is aging. In Alaska the average age of a professional registered nurse is close to 49 years old.

According to John Howard, MD, former director of the National Institute for Occupational Safety and Health, "the average number of hours worked annually by workers in the United States has increased steadily over the past several decades and currently surpasses that of Japan and most of Western Europe." (2004) Dr. Howard continues noting, "the influence of overtime and extended work shifts on worker health and safety, as well as on worker errors, is gaining increased attention from the scientific community, labor representatives, and industry...the volume of legislative activity seen nationwide indicates a heightened level of societal concern and timeliness of the issue." Many states have passed safe patient legislation with its foundation based on research correlating much higher error rates with overtime. The Institute of Medicine identifies long hours for nurses as one of the critical problems in safety studies, and has been advocating for safeguards.

Nurses are critical thinking professionals employed to assess, treat, and evaluate patients, and need a non-mandated work environment to function well. Patients should not be subjected to those who are fatigued, stressed, and forced to work overtime. We all depend on the nurse to be alert and aware.

I encourage the Alaska Legislature to be judicious and rational in its thinking. Regardless of the workforce challenges for institutions, we have no alternative but to follow a strategy of safety for patients and communities. Please limit the overtime and extended hours worked by nurses in the State of Alaska.

I thank you for this opportunity,


Patrick M. Nolan, D.O., F.A.C.E.
3300 Providence Drive, Suite 206
Anchorage, AK 99508

February 12, 2009

Re: HB50/SB12

Dear Honorable Legislators

I would like to see mandatory overtime/on call addressed. I was in the hospital from 0645 till 0045 last night then had to return at 0645 today. I am on call again this pm 1900 to 0700 tomorrow.

I still have to come to work tomorrow and if I get called in tonight how mentally alert will I be?

Thanks,

JoAnne Zemlicka

To my Legislature regarding patient safety:

February 10, 2009

Ladies and Gentleman,

As a current Registered Nurse in Alaska of 31 years, I must say that patient safety is very important to me as a professional. I would not ever practice as a Nurse if patient safety was an issue for me. Making a Nurse work mandatory overtime puts not only the Nurse at risk of injury, it also puts her patients at risk as well. For 29 years I worked in an Intensive Care Unit full time 12 hour shifts leaving home at 6pm and getting home most mornings at 8:30am if my patients did not go bad on me in the last hour of work, otherwise it might be more like 10am.

Nurses work extremely hard with life and death situations and would not hesitate to help when needed. To make it mandatory for a Nurse to work overtime is not only wrong, it is dangerous.

I feel that Nursing is such a hard job, that it is truly a calling from God himself to accomplish this professional practice every single day.

Sincerely,

Helen Christine Wood, RN, B.S.N.
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February 11, 2009

RE: HB 50/SB12

Dear Legislators:

I am writing this letter in support of HB 50/SB 12, acts relating to limitations on mandatory overtime for RNs and LPNs. Having been a nurse for over 25 years I can attest to how physically and mentally draining it is to work a shift as a nurse. A nurse caring for adults lifts over 1.2 tons in an 8 hour shift. The patients are feeling poorly and can become critically ill at any point, medications must be given in correct amounts to avoid toxic effects, families are anxious and often a little short, and there are many other healthcare providers with whom care must be coordinated. Because the consequences of errors can be so serious, this is not the type of work environment where nurse fatigue should be allowed to happen.

Over 30% of the nursing workforce is over the age of 50 years, and many of these nurses plan to retire in the next five years. In Alaska we have worked hard to train new nurses. We do not want to drive these nurses out of the Alaskan workforce because they are being forced to work excessive hours. Remember, Oregon, Washington and California have banned mandatory overtime for nurses making them a very attractive destination for Alaska nurses. Everyone I have talked to has been amazed that there would be any opposition to limiting the hours a nurse can work to 14.

Thank you for considering my views. Hopefully this will be the year that we work to create a work environment in which RNs and LPNs can provide quality patient care without concern of being worked to exhaustion.

Sincerely,

Patricia Senner MS, RN, ANP

February 16, 2009

Re: SB12/HB50

Dear Legislators,

I am currently a nurse educator, but have 25+ years of clinical nursing experience, as well as having recently been a consumer of health care for close family members. I am also a Certified Professional in Healthcare Quality (CPHQ), and in that role in a hospital reviewed medical records and worked to drill down adverse patient outcomes. It has been my personal experience as a bedside nurse in hospital and long term care positions that mandated overtime to cover staffing shortfalls, that the quality of care delivered was adversely impacted.

Exhausted people make poor drug calculations, poor assessments, and are less apt to walk around and check in on their patients frequently. It puts patient care in jeopardy and it also puts nurses at risk for bad practice and subsequent litigation. It is also a major reason why some nurses quit practicing in direct care positions -- and we need those nurses with high standards and clear boundaries taking care of us and our families through critical illnesses.

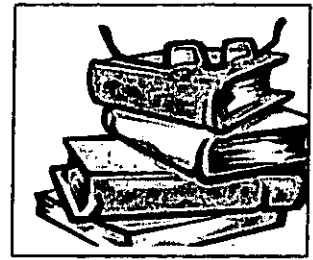
I ask you to support legislation that would ban mandatory overtime for nurses. Instead, support nursing education opportunities and we will continue to bring bright and motivated caregivers into the healthcare field.

Thank you for your consideration.

Anne Doerpinghaus, MS, RN, CPHQ
Assistant Professor, Allied Health
TVC, University of Alaska
ffaxd@uaf.edu

LAUREE MORTON

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February 16, 2009

Dear Representative Wilson:

Thank you for introducing HB 50, Limit Overtime for Nurses. Nurses perform tasks that require accuracy, quick thinking and sound judgment; each of which is diminished after long consecutive hours of work in stressful environments. Both as a patient myself and as a caretaker for my father and then my mother as they had extended stays in hospital settings, I have seen overworked nurses make mistakes. Fortunately, for us, they were not life-threatening, but it is easy to imagine how they might have been.

Although some nurses may want to work overtime in these tough economic times and hospitals may believe the practice saves money, neither reason should take precedence over patient safety. Nurses need to be alert and ready to handle emergency situations as they arise. We should do everything we can to help ensure the dedicated people who choose to work in the nursing profession can do their jobs safely and well. HB 50 is a good first step.

Sincerely,

Lauree Morton



ALASKA WOMEN'S LOBBY

AWL Mission: To defend and advance the rights and needs of Women, Children and Families in Alaska

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Letter of Support HB 50, Limit Overtime for Nurses

The Alaska Women's Lobby, a statewide group working to defend and advance the rights and needs of women, children and families, supports HB 50. Limiting overtime for nurses is a patient safety issue. When you are in their care you want someone available to you that is well rested and nourished, can think quickly on their feet, and can interact with patients in a friendly professional manner. You do not want someone responsible for your care that has been working for ten or twelve or more hours straight without a break to be the one in charge of the decisions that can mean the difference between your living or dying. Regardless of how hospitals or nurses posit this bill, patient safety should be paramount to any other concern.

Several studies have found patient safety is at risk when nurses work more than 12 hours in a 24 hour period. The 2004 study, Working Hours of Hospital Staff Nurses and Patient Safety, found that nurses working more than 12.5 consecutive hours were three times more likely to make an error than nurses working shorter hours. Working overtime at the end of a shift also increased the risk of making an error. Possible errors, which also applied to nurses who worked unplanned overtime at the end of a scheduled shift, included giving patients incorrect medications or dosages, according to the study.

According to a 2007 study sponsored by the US Agency for Healthcare Research and Quality (AHRQ), components of working conditions, including a hospital's organizational climate, staffing, and overtime, were found to influence outcomes in the elderly patients in hospital intensive care units (ICUs). Other recent AHRQ-funded studies on nurses' working conditions and patient outcomes have found a significantly greater risk to patient safety when nurses worked beyond their regularly scheduled number of hours.

The Institute of Medicine in its 2003 report, Keeping Patients Safe: Transforming the Work Environment of Nurses recommended that nurses provide direct patient care for no more than 12 hours in any given 24-hour period and less than 60 hours in a 7-day period. AHRQ called for the report in recognition of the key role of nurses in patient safety.

Alaska should do everything possible to ensure patient safety. Limiting overtime for nurses is a solid first step. Support passage of HB 50 this session. Take seriously the charge to keep Alaskans safe as they try and get their health care needs met.

2/11/09

Re: HB50/SB12

To the Honorable Senators and Representatives of the Alaska Legislature,

Please join with your counterparts in 12 other states that have passed legislation to prohibit mandatory overtime for nurses. Join our congressional delegation of Senator Murkowski and Congressman Young who co-sponsored the Safe Nursing and Patient Care Act of 2007 which prohibits mandatory overtime except in cases of states of emergency.

Most people would not choose to fly in a plane with a pilot forced to work beyond what they felt was their safety limit in competence for work hours. In fact, it is illegal. How then has it taken so long to pass this legislation that will contribute to patient safety? This is not a matter of employer rights in staffing. If a nurse tells the employer she or he has worked too many hours and is not safe to practice; why on earth would you not believe him/her? Would you risk your life or a loved one's on the nurse's word or their employers?

The rules for pilots solved this long ago. Similar restrictions in on-call and work hours are even now being addressed for medical residents due to safety reasons in an attempt to reduce medical errors. Alaska will not be the first state to address this problem with legislation but I certainly hope it will not be the last.

Although I no longer work in a hospital myself, I have been a patient in one and may be again. Speaking both as a nurse and a consumer, I urge you to support passage of HB 50 and SB 12.
Sincerely,

Lynn Hartz MSN, FNP-BC
3104 Brookside Drive
Anchorage, AK 99517
ph 907-248-4877
fax 907-222-1498

Re: HB50/SB12

2/11/09

Dear Legislators,

As a registered nurse (RN), I heartily support these two pieces of legislation. Patient safety will be jeopardized if health care facilities are given free reign to impose mandatory overtime.

Patient safety is Job 1 for nurses, to borrow a phrase from different industry. An RN who is required to work overtime beyond a twelve-hour day or even an eight-hour day is physically, mentally, and emotionally fatigued. Thus, her judgment is potentially compromised, her physical strength weakened, and her emotional capacity diminished.

In my institution, on my unit, I care for extremely sick individuals, with co-morbidities that include dementia, confusion, obesity (majority of patients), and often lower extremity amputation.

My unit is already suffering from budget issues that have resulted in less nurse's aide assistance. Hence I am responsible for safely assisting any combination of obese patients with altered mental status who are missing at least one leg to the toilet, with little or no staff assistance. At the end of a twelve-hour day, I am ready to go home. I have reached my daily limit of sharp, focused thought for decision-making, and accurate charting.

I may or may not have had a chance to take a quick break for a snack. Sometimes I am so busy caring for patients I forget to use the ladies room. Our institution's break and meal policy is catch as catch can. So, if mandatory overtime was added, I am not sure I would even get to eat dinner before my next "shift" started.

Mandatory overtime? That's too much to ask. It is not humane, IT IS NOT SAFE FOR THE PATIENT OR THE NURSE. An increase in back injuries in nurses, medication errors, and patient falls are examples of the consequences of mandatory overtime.

I care for renal patients who often have a minimum of a dozen or more scheduled medications in addition to "PRN" or as needed medications. These medications usually include insulin, blood pressure medications, and heparin or coumadin---all high risk medications. At the end of a twelve hour day, I can tell you that I become fatigued, and would be prone to making mistakes.

The health care industry is seriously compromising the public trust with mandatory overtime. The health care industry is exchanging the health and safety of their patients/clients for monetary gain.

Mandatory overtime results in nurses who themselves become patients due to fatigue, stress, and physical deterioration of their feet and legs.

The health care industry, in requiring mandatory overtime, falls in with a crowd that practices human exploitation.

Sincerely, Theresa E. Philbrick, RN

Gary C. Goins, MS,BSN, RN
3301 Eureka Street
Anchorage, AK 99503

February 10, 2009

To The Legislative Committee:

It is easy to see that the sacrifices a nurse makes to help the individuals in our communities is a significant one.

We do not take our responsibility lightly nor should we. Privileged to care for the injured and ill, for our neighbors and friends, sharing their moments of triumph and helping them cope with devastating losses.

I want to tell you that a nursing practice ratio makes a patient safer. In that bed that will be you, me, our child or our loved one. By focusing on each person we care for, we are able to see signs of problems early, catch them, alert the doctors and fix them. If we are exhausted from no breaks or seeing to many patients we can, like all good people, fail.

In practice for 20 years I have seen hundreds of these cases. I can tell you that patients in California are safer due to support to nurses for adequate breaks and established rules.

These laws most likely cost more but please believe me, if that was your child or your mom, you would sacrifice your life savings and more to secure their well being. I would too. No amount of tears can solve an error caused by lack of adequate and safe staffing. I have sat with people as those tears flow like mountain streams with family and clinicians devastated by the simple lack of prudence in health care planning.

I urge you, the noble men and women to adequately consider what effects are created by adequate staffing or the lack thereof.

Very truly yours:

Gary C. Goins MS, BSN, RN.

Staff Nurse

Adult Critical Care Unit Providence Alaska Medical Center

Emergency Department Alaska Regional Hospital

Recipient Congressional Certificate of Appreciation. United States Congress. 1987

February 11, 2009

Re: House Bill 50 Senate Bill 12

Dear Legislator,

My name is Debbie Thompson, I am a Registered Nurse certified in the Operating Room and Peri-Operative nursing and I am the Executive Director of the Alaska Nurses Association. In this role I act as a spokesperson for not only the public safety at large but just as importantly for the nurses of Alaska.

I would like to express my support in both House Bill 50 and Senate Bill 12. As a long time operating room nurse I can tell you that these bills address a serious public safety issue within the health care industry. Each citizen in the state of Alaska deserves to have a well rested nurse taking care of them. The government has stepped in made requirements for the airplane pilots, truck drivers and train conductors and engineers. Why would anyone put the lives of their loved ones or themselves at risk for potentially fatal medical errors.

Thank you for consideration to this matter.

Debbie Thompson, BSN, RN, CNOR

February 10, 2009

Dear Honorable Senators and Representatives:

I have been a Registered Nurse for the past 30 years. Twenty-nine of those have been spent in the Intensive Care Unit in various hospitals across the US. I have been contributing to the care of Alaskans for the past 15 years. I have shared in some very intense and uncertain times for many families. I know that nurses do not let patients or their families know when staffing is short, or when we are exhausted or hungry. We really try to make people feel secure when they are in our care.

The Institute of Medicine (IOM) report has identified how long hours and fatigue contributes to errors in healthcare. These errors can cost lives, or increase length of stay in the hospital which in turn adds to the already ballooning cost of healthcare.

I urge you to support HB 50 & SB 12. When patient are at their most vulnerable, is not the time they or their families should be concerned at the number of hours the nurse caring for them has worked. Long hours, fewer resources and higher patient acuity drive nurses from staying at the bedside in today's hospitals. Nurses will only last so long, when they go home after 12.5 hours concerned about what they might have missed because they are so exhausted and hungry. The University of Alaska is doing a great job educating tomorrow's nurses. I encourage you to do what you can by passing this legislation that will help to keep the nurses of the future working in hospitals.

Thank you,
Donna Phillips, RN
Girdwood, AK

February 13, 2009

Re: Support for HB50/SB12

Dear State Legislators,

I am a registered nurse of over 14 years now. I am in total favor of supporting HB50 and SB12. It is absolutely imperative that registered nurses and licensed practical nurses be able to provide safe patient care, this is why we became nurses, to care for patients. Patient care will without a doubt, be in jeopardy when nurses are forced against their better judgment to work excessive hours in health care facilities. Any overtime should be done out of personal choice and professional judgment. With mandatory overtime, we are placing the patients, whom have entrusted us to take care of them at one of the most vulnerable times in their life in danger.

Nurses are compassionate, caring individuals. It takes a special person to become a nurse, and then stay one for any length of time. Many nurses do not make it through the first year. That is not due to the fact that they suddenly do not care anymore. It is due to increased workload demands, workplace stresses, long working hours, and a complete lack of respect in general by administrative personnel who run hospitals.

Can you imagine what it is like to have to walk out of one patient's room who is dying of cancer and may be at the end of their life and then be able to go on to the next patient with a smile on our face and deal with a whole new set of circumstances. We are not only caring for that patient we are caring for their family members as well. This routine gets played out several times just in one shift.

Nurses are burning out at a high rate and there is not going to be another nurse just around the corner to replace them. By the year 2020 there will be a nursing shortage of estimated 500,000 nurses. We cannot continue to look the other way. We must make a positive step, not only to make nursing a honored profession to the newcomer, but also retain the experienced knowledgeable nurses we have.

A nurse's bottom line is patient care and safety. Please help support HB50 & SB12, the very life it may save may be your own.

Thank you,

Janet Hilleary RN

February 21, 2009

Re: Support for HB 50 & SB 12

Dear Legislators,

I know how important this bill is for the future of nursing experience. I do 12 hour nights and I know there's no way in the world I'd want to be responsible for patients beyond my shift time. I'm sure our malpractice insurance won't cover that kind of stupidity!

Thanks.

Ginny Weisman
242-9254

Feb. 22, 2009

Re: HB50/SB12

Dear Honorable Legislators,

My name is Barbara Quaid and I have been a registered nurse since 1970. Currently I am employed as a recovery room nurse at a local Anchorage hospital. Because I work in an O.R. setting we must take call. Recently I worked for 21 hrs, and that wasn't the first time. If it is your call night and things run late, or emergency cases are added, we must stay.

It is definitely a safety issue. A nurse at hour 3 of her shift is not the same nurse at hour 16, etc. With hospitals running at full capacity, be it due to a shortage of floor RNs or available beds, we must at times manage patients all night and all day in the recovery room. More times than not these are ICU/CCU patients.

We definitely need legislature governing the amount of hours a nurse is allowed to work, because it is not being safely managed the way it runs now. I testified via teleconference this past summer regarding this issue, and would be most willing to testify again. I hope this will be of assistance in your endeavor to keep nursing at a safe level.

Sincerely,

Barbara M. Quaid, R.N. CPAN.

February 13, 2009

Re: HB50/SB12

Dear Honorable Legislators,

My name is Ginger Spohr and I am an Emergency Room nurse. This is my first time getting involved in the legislative process and I am doing so because HB 50 and SB 12 are important bills for both myself and my co-workers. I strongly want to encourage support for both of these bills.

Right now there is a great opportunity for those in the House and Senate to help us continue the hard work that we do every day and help insure that we do so in a safe way.

My husband recently retired after working 20 years on the slope. He went back to school and earned a degree in nursing. After his first week of work, he told me, "I've never worked so hard in my entire life." Nursing is hard work at any age but with more and more people retiring and entering the field as a "second" profession, we must insure a safe and welcoming environment for them.

In closing, I would also like to ask anyone considering blocking these bills to imagine being a patient of a nurse who has just been told he/she must stay and work late. Imagine your boss telling you that you had to miss a birthday party of child or friend and that it would cost you your job if you didn't stay and work.

Please help keep nursing a respected profession. Most of the nurses I know are proud of what they do, please help us continue take pride in the work we do and help to ensure we are rested and willing to work.

Please support HB 50 and SB 12.

Sincerely,

Ginger Spohr, RN.

February 19, 2009

Re: SB12/HB50

I am a registered nurse at providence hospital. I want to tell you how important it is for nurses to be well rested & alert when caring for sick people. We make critical decisions, often at a moment's notice, that affect the lives of our patients. The giving of medications also is a critical event, considering the risk of making a mistake. Patients depend on us to make the right decisions for them. They have to trust us to do the job safely. That is dangerously hard to do when you are over tired & needing sleep.

Most of us work twelve hour shifts. The thought that employers can insist that we continue to work beyond that is scary. Likewise, working more than 3 days in a row, I feel, puts us at risk to make mistakes. When human lives are at stake, this could be a critical mistake. Only the individual knows how they feel, how tired, how sleepy, etc. nurses need to have the option to say no to mandatory overtime, to agree to that only if they feel fresh enough.

I'm hoping that we can get HB50SB12 passed this session.

Thank you for your help.

Sincerely,

Connie Lynch RN

2/19/09

Re: HB50/SB12

Dear Legislators,

Please support HB50 and SB 12. I believe RN's will provide overtime when we can. For our 36 week, we do what we can, as the population gets sicker. Management is getting more illogical.

Scott Young, RN

258-1861

2/14/09

Re: HB50/SB12

Dear State Legislator,

I am against mandatory overtime in any form. When we are subjected to mandatory overtime it leads too more mistakes in medication administration because we are tired. At one of my jobs; I work a 12 hour shift at a local hospital and find that the longer I am required to stay to finish required paperwork or patient care the more I have problems focusing on the task at hand and thus the more potential for a mistake. At another job that I work 8 hours; if I am mandated to work an extra shift The more I feel unsafe as I work in a psychaitric facility where patient safety and staff safety are imperative. Being tired I have problems with determining when patient's are feeling unsafe or threatened and thus there is more potential for violent and threatening outcomes.

Again I am very against manditory overtime. I just hope with the nursing shortage coming it is not made worse by mandating overtime in unsafe jobs as it will lead to more nurses rethinking this line of career choice thus increasing the nursing shortage.

Thank you for allowing me to air my opinions,

Barbara Popken RN

February 14, 2009

Re: HB50/SB12

Dear Legislatures,

I am an active member of the AaNA organization. I send this message in support of HB 50 and SB 12. Upon review of the last years (2008) activity around these two Bills, I stand behind all of the nurses in support of the passing of these two Bills.

As a nurse, I am in support of protecting the nursing professional at the bedside (and elsewhere as it applies) in being able to conduct a full day's work without the intimidation of mandatory overtime on their shoulders.

Thank you for all the work you do.

Sincerely,

Shirley LaForge, RN, MSN

2/11/09

Re: HB50 and SB12

Dear Honorable Senators and Representatives,

I am not in favor of mandatory overtime for nurses. Any overtime should be the nurse's choice. In addition I am not in favor of a nurse working more than 14 hours in a row. That allows for a 12 hour shift and any follow-up charting, etc. I know too many nurses who cannot recall how they even got home after working too long. Also, though 15 minute breaks are great, what concerns me is someone who doesn't even have time for lunch.

Thank you,

Mary Ann Wilson, RNC

2/12/09

Re: HB50/SB12

Dear Honorable Senators and Representatives,

I support the passage of HB 50 and SB 12. Please work on my behalf as well as my colleagues and patients to see that these bills are passed. Mandatory overtime for nurses has the potential for creating a more severe shortage of nurses in areas already in desperate need of licensed staff. Mandatory overtime and inflexible scheduling has the potential for deterring students from selecting nursing as a career option.

Please seek options that enhance the appeal of nursing as a career option, increase the nurse's ability to provide safe and effective care at the bedside, and decrease the attrition of nursing staff related to excessive work hours and work load. Please vote yes on HB50/SB12.

Thank you,

Janice McGraw, MS, RN, CNRN

February 10, 2009

Re: HB50/SB12

Dear Legislators,

As a Registered Nurse in the State of Alaska, I find it critically important that we have a say in our work scheduling and who dictates our professional practice. As a Registered Nurse, I make it my prime responsibility to be the advocate of patients. Because of this and the importance of our profession, I am supportive of House Bill 50 and Senate Bill 12.

Sincerely,

Joshua Meals, RN, BSN.

2/11/09

Re: HB5/SB 12

To the Honorable Senators and Representatives:

This is a letter of support for HB 50 and SB 12. As a working nurse in the Operating Room at Providence Hospital, I feel it is important for me to share my support for legislation that ends the practice of mandatory overtime for nurses in Alaska. Such practices are unfair to nurses, and unfair to the patients who deserve top-notch care from nurses who are properly rested and satisfied in their work environment. Currently, I am obligated to be available for over 24 hours of mandatory overtime each month.

Sincerely,

Paul Bryner

2/11/09

Re: HB50/SB12

Dear Honorable Legislators,

I am asking for your support on House Bill 50 & Senate Bill 12. I have been a registered nurse for 16 years and have been personally affected by both mandatory overtime and insufficient rest between shifts. We have tried to address these safety concerns with our employer; however, there is no incentive for hospital administrations to change current practice. It becomes financial, and the bottom line is it is cheaper to work a nurse extended hours than it is to provide safe working conditions. I have worked in other states with this type of legislature and it does have a positive impact. Therefore, I ask for your support from a state level. If the employer won't self regulate, then someone needs to for the sake of quality patient care and safe working conditions for the nurses. .

Thanks you for your time.

Wendy Conradi, RN, CNOR

2/11/09

Subject: Support for HB 50 and SB12

I urge house and senate members to support HB 50 and SB 12 to protect the rights of our patients and the welfare of our nurses.

Patricia Peacock, RN, BSN, CURN, CHPN.

RE: HB50/SB12

2/11/09

Dear Legislator,

As an RN of 30+ years, I am writing to support HB 50 and SB 12. I recently returned to bedside nursing after working outside of the hospital for the past 14 years. I find it astounding that the legislature wants to continue to require mandatory overtime for nurses.

After working 3, 12 hr. shifts in one week, I find I need a day to recovery and then have 3 days "off" to enjoy things other than my job, which allow me to have the energy to return to the bedside for 3 more days the next week. While I have worked overtime in the past year, it was done by choice. If overtime is to be required, it will decrease morale in nursing staff, thereby compromising patient care. Perhaps a meat packing plant or other assembly line type job sees the benefits of mandatory overtime. When one is caring for the human spirit and body, it is definitely not in the best interests of the patient to be cared for by a nurse who is working mandatory overtime.

Thank you for your work on our behalf.

Sincerely Yours,
Jeanne Kemp RN, BSN

Date: 2/11/09
Re: HB50/SB12

Dear Legislators,

I have just been informed of the ASHNA's position regarding legislation to block any regulations regarding employer rights to address such issues as nurse and patient safety. It seems to me that this is not in the best interest of any of the parties that participate in direct patient care, much less the person who is being cared for. I seriously doubt that the public knows anything regarding this and would that be known, there would be an abundance of objections from both parties. The only persons who this would benefit would be the people managing the books of these employers and their board of directors. That is, unless it was their family or themselves who was receiving this care. This issue has been going on for too long and as one of those people who work long shifts for the sickest of these patients, it would be akin to whipping a horse who has plowed the fields too long in the day. It just can't be done without consequences. These consequences would have implications for public health and in the long run risk increasing hospital days for the patients who got marginal care from the employees forced to do this work. It is also comparable to asking for volunteers, then picking them anyway, should no one raise their hand. It is one thing for someone to use their judgement in working overtime, but another to cut costs and recruiting people to do this extra work, such as travelers who have no intention to stay in this area. The answer to the higher paid travelers would be make the lower paid employees do this work. It is also like bringing in employees from out of the country, give them lower wages, and make them do a job, whatever that job is. Thankfully, we have the union here to prevent such nonsense, but then the ASHNA position is just as ridiculous. The term "Magnet Hospital" has been tossed around as a buzz word for quite some time now, and it is laughable that forcing employees to do something that not only would affect their life outside of work, but to risk their license as well, would somehow make a difference in obtaining that status. It is words on paper and a status that looks good but really means nothing if employees are not happy. Please know that even though you may not have hundreds of comments regarding this, that it is due to not many people knowing the position of this board. I have been in critical care for close to 30 years and have seen my job get harder, despite the experience I have. This risks everything that health care has to offer, despite breakthroughs in disease prevention and treatment.

Sincerely Yours,

Debbie O'Brien, RN, CCRN
Anchorage, Alaska

2/11/09

Re: HB50/SB12

To the Honorable Senators and Representatives of the Alaska Legislature,

Please join with your counterparts in 12 other states that have passed legislation to prohibit mandatory overtime for nurses. Join our congressional delegation of Senator Murkowski and Congressman Young who co-sponsored the Safe Nursing and Patient Care Act of 2007 which prohibits mandatory overtime except in cases of states of emergency.

Most people would not choose to fly in a plane with a pilot forced to work beyond what they felt was their safety limit in competence for work hours. In fact, it is illegal. How then has it taken so long to pass this legislation that will contribute to patient safety? This is not a matter of employer rights in staffing. If a nurse tells the employer she or he has worked too many hours and is not safe to practice; why on earth would you not believe him/her? Would you risk your life or a loved one's on the nurse's word or their employers?

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Although I no longer work in a hospital myself, I have been a patient in one and may be again. Speaking both as a nurse and a consumer, I urge you to support passage of HB 50 and SB 12. Sincerely,

Lynn Hartz MSN, FNP-BC
3104 Brookside Drive
Anchorage, AK 99517
ph 907-248-4877
fax 907-222-1498

Re: HB50/SB12

2/11/09

Dear Legislators,

As a registered nurse (RN), I heartily support these two pieces of legislation. Patient safety will be jeopardized if health care facilities are given free reign to impose mandatory overtime.

Patient safety is Job 1 for nurses, to borrow a phrase from different industry. An RN who is required to work overtime beyond a twelve-hour day or even an eight-hour day is physically, mentally, and emotionally fatigued. Thus, her judgment is potentially compromised, her physical strength weakened, and her emotional capacity diminished.

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The health care industry, in requiring mandatory overtime, falls in with a crowd that practices human exploitation.

Sincerely, Theresa E. Philbrick, RN



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."

**CONTACT: Valerie Davidson, Senior Director
Legal and Intergovernmental Affairs
through Pat Jackson, State Liaison for Alaska Native Health
523-0363 – pajackson@anthc.org**

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

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

⁴See, e.g., 25 USC § 1616f; 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).

⁶25 USC § 450a(b).

⁷42 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).

⁸29 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

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.

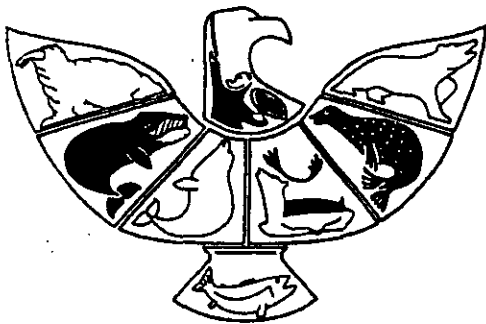
Together, these federal laws address the same concerns intended to be addressed by SB12/HB50. However, they do so in a way that allows facilities more flexibility. While they impose certain performance and quality standards, they do not dictate the means for accomplishing them by imposing rigid requirements 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.



Alaska Native Health Board

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Phone: (907) 562-6006
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March 6, 2009

Representative Peggy Wilson
State Capital Building, Room 406
Juneau, Alaska 99801-1182

Dear Representative Wilson,

We write to express our deep reservations over HB 50, limiting mandatory nurse overtime.

The Alaska Native Health Board appreciates and values the services nurses provide to patients in Alaska, especially our Alaska Native patients, whom we consider to be our customer-owners.

It is the experience of Tribal health providers that nurses are highly dedicated, caring providers who will give their last ounce of skill to care for their patients. Tribal health providers expend a great deal of effort and expense to recruit and retain good nurses to provide care and cover all necessary shifts. Providing adequate and safe nurse staffing is an important part of Tribal health providers' overall responsibility to provide high-quality care to our patients. It is out of this responsibility to care for our patients that we express our concerns over HB 50, as follows:

HB 50 will hurt patient care, especially in rural Alaska

In healthcare, the guiding principle is "do no harm." However, with HB 50, in many remote Tribal health locations, all it would take to leave a shift uncovered would be for one or two nurses to decide, for any reason or no reason at all, that they don't want to work overtime.

The rural Tribal health provider would in many cases have no choice but to simply not cover the shift and put patients at risk, because rural Tribal health providers do not have the urban luxuries of (1) calling in other off-duty nurses, (2) getting temporary "agency" nurses to cover shifts on short notice or (3) re-directing patients to other nearby facilities.

In practice, HB 50 would make it impossible for Tribal health providers to make sure all shifts were covered, particularly in the remote rural parts of the State. Perhaps this is why almost no rural States have adopted legislation similar to HB 50.

HB 50 is an unfunded mandate that will unnecessarily drive up costs

Many Alaska Tribal health providers are having a tough time financially due to sky-high fuel and other costs commonly associated with running a facility in rural Alaska. They have had no choice in some cases but to lay off healthcare workers and reduce services.

Under HB 50, even in a situation where a Tribal health provider might be able to cover a shift when one or more nurses were to choose not to work overtime, the Tribal health provider would likely only be able to do so at GREAT COST, e.g., (1) over-hiring extra regular-shift nurses ahead of time (assuming a sufficient labor pool) and hoping one of the new hires is willing to pull non-scheduled shifts; (2) flying in temporary "agency" nurses from an urban area at the last minute (expensive), or (3) transferring / referring patients to an urban provider (adding an additional expensive travel cost to providers and to the Medicaid program).

Laws such as HB 50 are intended to solve urban problems not applicable in Alaska

Legislation such as HB 50 has been adopted in only 15 States, nearly all urban, out of concern that hospitals might be (1) under-hiring and then abusing mandatory overtime in order to control payroll/benefits costs, or (2) abusing mandatory overtime rules as a collective bargaining tactic.

There is no evidence that these conditions exist in Alaska. While there are well-documented chronic challenges in nurse staffing, particularly among Tribal health providers, these staffing challenges are no different than the staffing challenges we experience with all the healthcare professional categories. And while we cannot speak for others, we can say unequivocally that Alaska Tribal health providers are not purposely understaffing as an abusive labor practice. The reality is that to the degree we have nurse staffing challenges, it is because of the tight national nurse labor market, compounded by the never-ending challenge of figuring out how to get good nurses, doctors, technicians, administrators, etc. to live and work in remote locations in Alaska.

HB 50's proponents agree that *"there are few official overtime complaints by nurses..."*, and that there are *"low numbers of complaints and benign exit interviews..."*

We acknowledge that nursing is a tough profession. The work itself is challenging enough, in addition to the difficult shift scheduling that of necessity must put patients' needs first. But those challenges come with the territory in healthcare: Physicians, administrators, technicians, clerks, etc. also must adjust the scheduling of their work to meet the needs of the patients.

HB 50 is unnecessary: mandatory nurse overtime issues can be addressed by other means

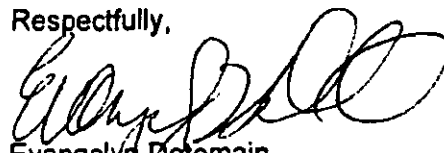
Because of the well-documented nurse shortage in Alaska, there is a very tight labor market for nurses. Nurses have significant leverage in negotiating the terms and conditions of their employment. Hours and shifts to be worked, shift-swapping flexibility, on-call requirements and how to handle anticipated overtime are all commonly agreed to in employment agreements.

In reality, the tight labor market for nurses in Alaska, combined with well-established avenues and procedures for nurses to negotiate the terms and conditions of employment, give nurses more than sufficient leverage to address any concerns they might have with regard to mandatory overtime, or for that matter, any other terms or conditions of employment.

The result, acknowledged by HB 50's proponents, is that *"there are few official overtime complaints by nurses..."*, and *"low numbers of complaints and benign exit interviews..."*

Representative Wilson, we thank you for efforts on behalf of Alaska Tribal health providers. We appreciate this opportunity to express our concerns with HB 50, and we look forward to working with you in a cooperative manner on the many important healthcare issues pending this session.

Respectfully,



Evangelyn Dotomain
President/CEO



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, Kakanak 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
Manilaq 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



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.



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 Hours 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

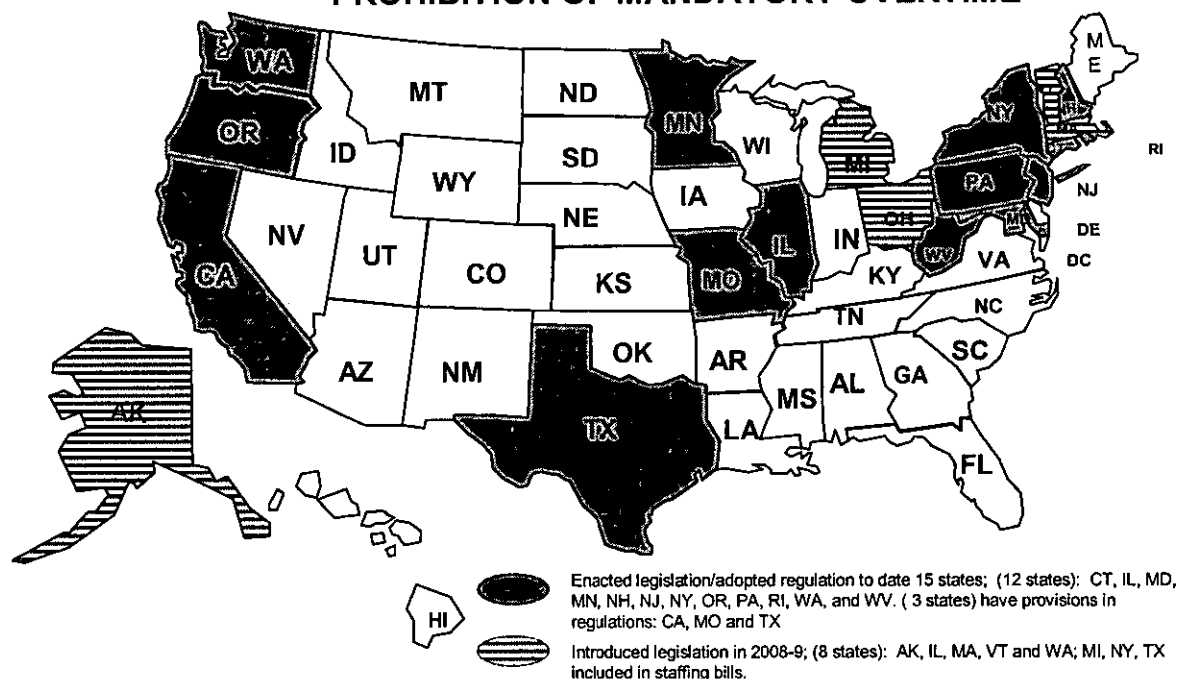
Tennessee

Vermont

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

The American Nurses Association's Nationwide State Legislative Agenda

PROHIBITION OF MANDATORY OVERTIME



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.



Questions for you as Law Makers

- The Federal Government has passed laws to limit the number of hours that pilots can safely fly, truckers can safely drive, construction workers and 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 who are at their most vulnerable?
- 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.



Questions for you as Law Makers

•Do you think that nurses should have the right to refuse
 over a basic _____ use
 safety _____ in emergency?

•When you answer these questions, we 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,
 _____ care 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 area 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 you 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 cath, 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 respectfully requests that the Alaska Legislation allow us the opportunity to address these critical issues during our upcoming negotiations.

Thank you for allowing me 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 article 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.

Tanana Chiefs Conference

Chief Peter John Tribal Building

122 First Avenue, Suite 600

Fairbanks, Alaska 99701-4897

(907) 452-8251 Fax: (907) 459-3850

SUBREGIONS

UPPER

KUSKOKWIM

McGrath
Medfra
Nikolai
Takatna
Telida

LOWER YUKON

Anvik
Grayling
Holy Cross
Shageluk

UPPER TANANA

Dot Lake
Eagle
Healy Lake
Northway
Tanacross
Tetlin
Tok

YUKON FLATS

Arctic Village
Beaver
Birch Creek
Canyon Village
Chalkyitsik
Circle
Fort Yukon
Venetie

YUKON

KOYUKUK

Galena
Huslia
Kallag
Koyukuk
Nulato
Ruby

YUKON TANANA

Alatna
Akiakaket
Evansville
Fairbanks
Hughes
Lake
Minchumina
Monley Hot
Springs
Minto
Nenana
Rampart
Stevens Village
Tanana

April 10, 2009

The Honorable Bob Herron
The Honorable Wes Keller
Co-Chairs
House Health and Social Services Committee
Alaska State Legislature
State Capitol, Room 106
Juneau, Alaska 99801

Re: Nurse Overtime
HB 50 and 51

Dear Representatives Herron and Keller:

Current proposals to limit Mandatory Nurse Overtime (HB 50, 51 and SB 12) seek to address a very real and serious problem: i.e. the national and state shortage of nurses. The national nursing shortage is expected to continue to worsen through 2016. In response, hospitals outside of Alaska have increased mandatory nurse overtime, and in response, national nursing associations have initiated a national state-by-state effort to obtain limits on mandatory nursing overtime. To date, fifteen (15) other states have enacted legislation to limit mandatory nursing overtime in some form.

The bills before the legislature seek to implement a generic national response to the nursing shortage problem with regulation similar to that recently enacted in other states. This approach may be appropriate to large urbanized metropolitan states, and may reflect an appropriate national response to a national problem. However, the approach may not necessarily reflect Alaska's unique health care system circumstances and needs. Specifically, Alaska presents unique circumstances, including

- labor market forces in which nurses are in high demand, requiring employer accommodation to individual nurse demands
- collective bargaining agreements, with strong nurse unions
- heavy reliance on *locum tenens* (traveling) nurses sourced out-of-state
- the challenges presented in providing rural health services in Alaska's bush, and
- an extensive federal health care system (tribal/Indian Health Service, Veterans, military)

A number of concerns have arisen in response to this proposed legislation, which should be addressed in the legislative process. These concerns include:

1) Federal Facilities. The legislation purports to apply these regulations to "federal" facilities, which is likely beyond the state's regulatory authority. These federal facilities include Veterans, and military facilities which are clearly beyond the states' regulatory authority. Equally, the Indian Health Facilities, which are federal, raise serious questions, particularly with nurses who are federal employees working with tribal organizations under Intergovernmental Personal Act (IPA) assignments. The legislation would be clearly pre-empted as to the IPA nurses, and is highly questionable as to direct hire nurses (non-IPA) working in a federal facility.

2) IPA/non-IPA Parity. If the legislation does apply to non-IPA staff working in federal facilities, the legislation has the un-intended consequences of shifting the entire burden of possible mandatory overtime to federal IPA nurses, which concentrates and exacerbates the problem as to certain nurses.

3) Travel. Nurses travel from urban centers to rural areas. The legislation does not address how travel time is treated, which would normally be dealt with in light of federal regulations which are incorporated by reference into the AWHHA; however, the legislation is inconsistent with several provisions of federal laws and regulations and the treatment of travel time under inconsistent regulations will cause serious problems. Moreover, some proposed substitutes attempt to make distinctions between rural/urban nurses. Urban based nurses traveling to rural areas to work will create confusion as to which rules apply if the substitutes are adopted.

4) Nurse Specialties. The bill assumes that nurses are fungible; i.e. any single nurse may be substituted for another nurse. This does not reflect various nursing specialties, so that nurses practicing in specialty areas cannot be easily replaced by general nurses or nurses with specialties in other areas.

5) Collective Bargaining Agreements. The bill would conflict with some existing collective bargaining agreements, which would raise constitutional issues associated with state statutes that impair the right of contract. Moreover, the bill would prohibit certain scheduling systems (e.g. 3 x12 hours shifts a week). Scheduling issues are mandatory bargaining subjects under the National Labor Relations Act, and are the state statute may impair the rights of employer and nurse unions to negotiate a mandatory bargaining subject.

6) Application to Non-Hospital Facilities. In almost all cases, the concerns relate to nurse staffing patterns in hospitals. However, the statute applies to many non-hospital facilities. It is not clear that problems arising in hospital work environments relate to non-hospital work environments. The legislation is overly broad relative to the problem being addressed, and if adopted, should apply to hospital environments only.

7) Unnecessary Reporting. The bill would impose regulatory reporting and related burdens on all nurse employers, even if the nurse employers do not utilize

mandatory overtime practices. The majority of nurse employers in Alaska do not require mandatory overtime, but would be required to report on non-activity. This is highly unusual in labor law, which normally only requires reporting where the activity in question is occurring. The reporting requirements respecting non-activity, is unnecessary.

Finally, we do not believe that that increased regulation in Alaska will effectively address a national nursing shortage. We believe that a better approach is to provide support for increased training of nurses in Alaska, particularly for Alaska residents that are likely to remain in Alaska or likely to seek employment in underserved areas such as rural Alaska. We would encourage the Legislature to explore options to expand UAF nurse training as a more effective approach to deal with the nurse shortage.

Sincerely,
TANANA CHIEFS CONFERENCE


Michael J. Waller
General Counsel



MEMORANDUM

Date: April 8, 2009

To: Rod Betit, President/CEO ASHNHA
Evangelyn Dotomain, President/CEO Alaska Native Health Board

From: Starla Fox, Deputy Director of Nursing

Cc: Robert Clark, CEO
Lorraine Jewett, COO
Sue Mulkeit, Director of Nursing

Re: Response to Nurse Overtime Bill

This memo is testimony regarding HB 50 and SB 12 – Nurse Overtime Bill.

As the direct supervisor of the current Inpatient and Emergency Nursing workforce at BBAHC, I've heard the concerns voiced by nurses on the unit. Many are upset that the possibility of working extra hours and extra shifts may not be available for them or will be limited by the legislation. As you probably know there are some nurses who are not interested in working extra and they are never forced to do so; however we do have a group of nurses who are very interested in working extra to gain added income. These staff members know their limitations and are never forced to cover shifts if they do not want to. My concern for this bill is that it puts the facilities in a difficult situation, yet may not help with solving the issue of nurses working long tedious hours if that is what the nurses choose to do. For example, if I'm a nurse in the Anchorage area, I can work as many hours as I choose and no one would know the difference. I could be employed at one facility and also moonlight at another facility down the street. It seems that the language of this Overtime Bill does not limit the individual nurse but instead the facilities. If the purpose of limiting hours worked is to protect the patient population from fatigued and overworked nurses, then the responsibility should also be placed on the individual nurse as well as the facility.

Rural hospitals in Alaska are very isolated and have a small limited workforce. There is not a major competitor down the street that we can pull nurses from to moonlight for us

when there is a shift that needs to be covered. This Overtime Bill will limit the small hospitals and increase our cost without truly getting to the problem in the larger urban settings defined in SECTION 1 #2 that reads "*quality of patient care is jeopardized by registered nurses and licensed practical nurses who work unnecessarily long hours in health care facilities;*". Nurses who want the additional income that live in the city will still be able to work as many hours as they want if they work part-time at several facilities in addition to their permanent employer. I don't see this as helping with patient safety in these urban areas and it puts undue stress on the rural facilities that have a smaller pool of licensed nurses to draw from. It will be difficult to sell 8 hour shifts to nurses who love working 12 hour shifts and the housing availability in the remote settings is limited and will only worsen if we are forced to increase our workforce to accommodate 8 hour shifts. The reporting requirements in HB 50 and SB 12 are onerous for the small hospitals. I believe that this bill will create additional barriers to affordable healthcare for those patients who reside in remote parts of the state. The April-June 2007 issue of Nursing Administration Quarterly was entitled "The Perfect Storm: Ratios, Retirement and Entry Into Practice". We are already experiencing a nationwide nursing shortage, why would our legislators want to tie the hands of the rural healthcare facilities by passing a bill that does not solve the real issue of nurses working long hours in the urban settings.

Please consider this testimony as you prepare your statement to our state legislature.

Sincerely,

Starla Fox, RN, MNS
Deputy Director of Nursing