

HB

50

<target><bill>HB 50</bill><subject>HB
50</subject><comm>SFIN26</comm></target>

SENATE FINANCE COMMITTEE REPORT

DATE: 3/26/10

FURTHER:

DATE TURNED IN TO OFFICE: 4/18/10

Finance Committee considered CS FOR HOUSE BILL NO. 50(FIN)

HB 50 LIMIT OVERTIME FOR REGISTERED NURSES

"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."

and recommends:

- be replaced with SCS or CS _____ (_____)
- adopt previous SCS or CS _____ (_____)
- attached amendment(s)
- adopt _____ Letter of Intent
- further referral to _____ Committee

SENATE BILL:	
<input type="checkbox"/>	Same Title
<input type="checkbox"/>	New Title
<hr/>	
HOUSE BILL:	
<input type="checkbox"/>	Same Title
<input type="checkbox"/>	Technical Title Change
<input type="checkbox"/>	New Title w/ SCR # _____








NEW FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#
DHS	3/19			✓	4
DHS	3/19			✓	5
DHS	3/19			✓	6
LWF	3/23		✓		7

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	PRINTED LAST NAME	DO PASS	DO NOT PASS	NO REC	AMEND
	Huggins	✓			
	Thomas	✓			
	Egan	✓			
	Olson	✓			
	Ellis				
CO-CHAIR: 	Hoffman				
CO-CHAIR: 	Stedman				

FISCAL NOTE

STATE OF ALASKA
2010 LEGISLATIVE SESSION

Fiscal Note Number: 4
 Bill Version: CSHB 50(FIN)
 (H) Publish Date: 3/24/10

Identifier (file name): HB050CS(HSS)-DHSS-N-03-19-10 Dept. Affected: Health & Social Services
 Title Limit Overtime for Registered Nurses RDU Public Health
 Component Nursing
 Sponsor Wilson
 Requester House Finance Component Number 288

Expenditures/Revenues (Thousands of Dollars)

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

	Appropriation Required	Information						
		FY 2011	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016
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 (
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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 (FY2010) 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: Ward B. Hurlburt, MD, MPH, Chief Medical Officer/Director Phone 269-8126
 Division Public Health Date/Time 12/28/09 12:00 AM

Approved by: Alison Elgee, Assistant Commissioner Date 3/19/2010
DHSS Finance & Management Services

FISCAL NOTE

STATE OF ALASKA
2010 LEGISLATIVE SESSION

Fiscal Note Number: 5
Bill Version: CSHB 50(FIN)
(H) Publish Date: 3/24/10

Identifier (file name): HB050CS(HSS)-DHSS-API-03-19-10 Dept. Affected: Health & Social Services
Title: Limit Overtime for Registered Nurses RDU: Behavioral Health
Component: Alaska Psychiatric Institute
Sponsor: Wilson
Requester: House Finance Component Number: 311

Expenditures/Revenue (Thousands of Dollars)

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

	Appropriation Required	Information						
		FY 2011	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016
OPERATING EXPENDITURE								
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 EXPENDITURE								
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CHANGE IN REVENUES								
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FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY2010) cost: _____

POSITIONS

Full-time	2.0		2	2	2	2	2
Part-time							
Temporary							

ANALYSIS: (Attach a separate page if neces

HB050 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 HB050 is to eliminate mandatory overtime for RNs unless the overtime is due to a grave and unforeseen event. Under the bill, use of mandatory overtime in excess of the bill's limitations will result in a report to the Department of Labor.

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

Prepared by: Melissa W Stone
Division: Behavioral Health

Phone: 269-3410
Date/Time: 12/28/09 5:00 PM

Approved by: Alison Elgee, Assistant Commissioner
DHSS Finance & Management Services

Date: 3/19/2010

FISCAL NOTE #5

STATE OF ALASKA
2010 LEGISLATIVE SESSION

BILL NO. CSHB 50(FIN)

ANALYSIS CONTINUATION

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

FISCAL NOTE

STATE OF ALASKA
2010 LEGISLATIVE SESSION

Fiscal Note Number: 6
 Bill Version: CSHB 50(FIN)
 (H) Publish Date: 3/24/10

Identifier (file name): HB050CS(HSS)-DHSS-PH-03-19-10 Dept. Affected: Health & Social Services
 Title: Limit Overtime for Registered Nurses RDU: Alaska Pioneer Homes
 Component: Pioneer Homes
 Sponsor: Wilson
 Requester: House Finance Component Number: 2671

Expenditures/Revenues (Thousands of Dollars)

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

	Appropriation Required	Information						
		FY 2011	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016
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								
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CHANGE IN REVENUES (
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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 (FY2010) 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 12/31/09 12:00 AM
 Approved by: Alison Elgee, Assistant Commissioner Date 3/19/2010
DHSS Finance & Management Services

FISCAL NOTE

STATE OF ALASKA
2010 LEGISLATIVE SESSION

Fiscal Note Number: 7
 Bill Version: CSHB 50(FIN)
 (H) Publish Date: 3/24/10

Identifier (file name): HB050CS(FIN)-DOLWD-WH-03-23-10 Dept. Affect: Labor and Workforce Development
 Title: Limit Overtime for Registered Nurses RDU: Labor Standards and Safety
 Component: Wage and Hour
 Sponsor: Representatives P. Wilson, Gara, Tuck, Petersen, Lynn, et. Al
 Requester: House Finance Committee Component Number: 345

Expenditures/Revenues (Thousands of Dollars)

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

	Appropriation Required	Information						
		FY 2011	FY 2012	FY 2013	FY 2013	FY 2014	FY 2015	FY 2016
OPERATING EXPENDITURES								
Personal Services								
Travel								
Contractual								
Supplies								
Equipment								
Land & Structures								
Grants & Claims								
Miscellaneous								
TOTAL OPERATING		*	*	*	*	*	*	*

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								
1005 GF/Program Receipts								
1037 GF/Mental Health								
Other-AHFC Receipts								
TOTAL		*	*	*	*	*	*	*

Estimate of any current year (FY2009) cost: _____

POSITIONS

Full-time								
Part-time								
Temporary								

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Co-Chair Rep. Stoltze
House Finance Committee
Co-Chair Rep. Hawker
House Finance Committee

Phone 465-4958
 Date/Time 3/23/2010 3:39PM
 Date 3/23/2010



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.

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. Facilities may declare a “temporary nurse staffing emergency” of up to 30 days. A report shall be filed by the facility Administrator with the Department of Labor and Workforce Development that describes the efforts used to avoid the staffing emergency. Additionally all federal and native facilities have been exempted.

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

26-LS0274\U

ALASKA STATE LEGISLATURE

Interim:
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Wrangell, AK 99929
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Session:
State Capitol, Room 406
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Phone: (907) 465-3824
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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 8 exceptions to the requirements of (a) & (b), including for school nurses, medivac flights, unforeseen emergencies that could jeopardize patient safety, a nurse involved in an ongoing procedure or surgery, a staffing shortage due to weather, and certain on-call situations. This section also exempts certain weekend work hours. Voluntary overtime is permitted so long as it does not exceed more than 14 consecutive hours.
- Sec. 18.20.420 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. 18.20.430 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

ALASKA STATE LEGISLATURE

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REPRESENTATIVE PEGGY WILSON HOUSE DISTRICT 2

Labor and Workforce Development, and a graduated schedule of penalties if it is determined that a violation has occurred.

- Sec. 18.20.440 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.
- Sec. 18.20.450 provides for the Department of Law to investigate the retaliation and report to the commissioner the results. The commissioner shall ensure the facility provides all the appropriate relief for the complainant.
- Sec. 18.20.450 establishes a semiannual reporting requirement for a health care facility to provide certain data relating to overtime and on-call activity for nurses.
- Sec. 18.20.460 exempts nurses who are employed in a healthcare facility operated by the federal government or a tribal organization.
- Sec. 18.20.470 provides the requirement for a facility to post a notice of the employee rights and employer obligations.
- Sec. 18.20.499 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, 2010 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, 2011 for all other provisions of the Act.



Alaska State Legislature

Representative Peggy Wilson
House District 2

MEMORANDUM

HB 50 Version N 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)



Alaska State Legislature

Representative Peggy Wilson
House District 2

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)

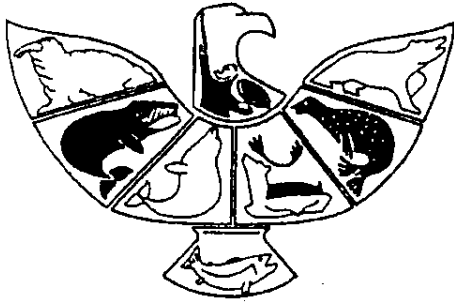
Two other changes were made to the bill: Facilities will be required to post a sign describing these statutes. (pg 7, line18-23) The one hour exemption to find a replacement nurse has been extended to be more flexible (pg 4, line 16-18)

HB 50 Version U changes:

Page 4 line 1-8, language was added to clarify the "modified Baylor Plan" exemption. Two of the statute references had been reversed and a definition of children was added.

Page 6 line 20-29. Language was deleted that would have required the Department of Law to investigate retaliation complaints. The Department of labor and Workforce development will now do that investigation.

Page 8 line 21 and 24, dates were changed to reflect the bill being passed this session.



Alaska Native Health Board

1840 Bragaw Street, Suite 220
Anchorage, Alaska 99508

Phone: (907) 562-6006
Fax: (907) 563-2001

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

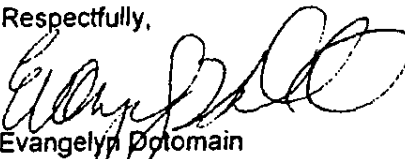
Because of the well-documented nurse shortage in Alaska, there is a very tight labor market for nurses. Nurses have significant leverage in negotiating the terms and conditions of their employment. Hours and shifts to be worked, shift-swapping flexibility, on-call requirements and how to handle anticipated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

Hours of Service Limitations on Other Professions

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

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

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

U.S. Commercial Maritime Operations

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

International Seafarers' Hours of Work Convention, 1996

- 14 hours in any 24-hours period, with a minimum rest of not less than 10 hours of rest within any 24-period.
- 72 hours in any seven-day period, with minimum rest of not less than 77 hours in any seven-day period.

U.S. Commercial Pilots

- A maximum of 8 hours of flight duty time on domestic flights. It can be exceed up to an absolute maximum of 16 hours only for events beyond a carrier's control.
- A minimum of 8 hours of uninterrupted rest in the 24-hour period before finishing their flight duty.

U.S. Commercial Truckers

- Not more than 11 hours of driving during a 14-hour duty period, to be followed by a minimum of 10 hours of off-duty time.
- Other rules in flux on total allowable driving time and required amount of rest for a seven-day period.

Underground Miners in Alaska

- AS 23.10.410 establishes a limit of not more than 10 hours in a 24-hour period.
- Limited exceptions are allowed for emergencies. The commissioner of labor and workforce development may grant a variance of more than 10 hours, but not more than 12 hours if permitted under a collective bargaining agreement and it is determined to be in the best interest of resident workers.



CS for House Bill No. 50 (HSS): "Safe Nursing & Patient Care Act"

Facility	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.

Studies Relating to Effects of Excessive Overtime by Nurses

1. **Institute of Medicine (IOM) Report (2004), *Keeping Patients Safe: Transforming the Work Environment of Nurses*. Editor: Page.**

Strong evidence links prolonged work hours (more than 12 hours in a 24-hour span, or more than 60 hours in 70 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 (p. 12). Prolonged periods of wakefulness can produce effects that are similar to the effects produced by alcohol intoxication – working in excess of 16 hours can produce performance decrements equivalent to a blood alcohol concentration of .05 percent (pg. 6).

A separate survey by IOM in 2003 found that 27% of full-time hospital and nursing home nurses reported working more than 13 consecutive hours one or more time per week. The IOM recommends that states prohibit nurses from working more than 12 hours in a 24 hour period or more than 60 hours per week.

2. **Health Affairs: The Policy Journal of the Health Sphere, Vol. 23, No. 4, *The Working Hours of Hospital Staff Nurses and Patient Safety*, (2004). Authors: Rogers, Hwang, Scott, Aikens & Dinges.**

Found 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 (pgs. 202-212).

3. **Michigan Nurses Association, *The Costs of Mandatory Overtime for Nurses*, (2004). Author: Public Policy Associates, Incorporated.**

It is widely recognized that overtime work among nurses and patient safety are related, and this association is routinely described as one in which increased overtime (voluntary or mandatory) is associated with reduced patient safety (pg. 2). Determined that a ban on mandatory overtime could save 351 lives annually and \$29 million in annual health care organization liability within Michigan (pgs 6-11).

4. **New England Journal of Medicine, Vol. 346, No. 22, *Nursing in the Crossfire*, (2002). Author: Steinbrook.**

Determined that nursing is a very stressful job with a very flat career path. Found RN's are discontented for many reasons including inadequate levels of staffing for both nurses and support staff and excessive workloads. Quotes a recent national survey of working nurses that 61% of

respondents said they had observed increases in overtime or double shifts during the past year, and 48% said the amount of overtime required had increased and more than 52% said it was either mandatory or "voluntary but feels like it is required" (pgs. 1757-1766).

5. **New England Journal of Medicine, Vol. 352, No. 2, (2005), *Extended Work Shifts and the Risk of Motor Vehicle Crashes Among Interns*. Authors: Barger, Cade, Ayas, Cronin, Rosner & Speizer.**

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. Found that long, unpredictable hours suggest a link between poor working conditions and threats to patient safety (pgs. 125-134).

6. **American Journal of Nursing, Vol. 106, No. 4, (2006), *How Long and How Much Are Nurses Working?* Authors: Trinkoff, Geiger-Brown, Brady, Lipscomb & Muntaner.**

Recent research with 2,273 RNs 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 (pgs. 60-71).

7. ***Wall of Silence – The Untold Story of the Medical Mistakes That Kill and Injure Millions of Americans*, LifeLine Press, (2003). Authors: Gibson and Singh.**

Notes October 2002 study by the Journal of the American Medical Association shows that the number of patients who die in the hospital increases when nurses are assigned to care for too many patients (pg. 100). Describes the growing trend of hospitals using forced overtime, noting that hospitals now "typically maintain enough nursing staff only to cover core functions, if even that much. When patient admissions spike, the core staff have to cope. Mandatory overtime has become a way of solving a much bigger problem than it was intended to solve, and it is driving away the very nurses that are needed" (pg. 107).



**Alaska Native
Tribal Health Consortium**

Administration · 4000 Ambassador Drive · Anchorage, Alaska 99508 · Phone: (907) 729-1900 · Fax: (907) 729-1901 · www.anthc.org

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.

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

ENDOCRINOLOGY/ INTERNAL MEDICINE

A PROFESSIONAL CORPORATION

3300 PROVIDENCE DRIVE

SUITE 206

ANCHORAGE, ALASKA 99508

TELEPHONE (907) 861-6100

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:

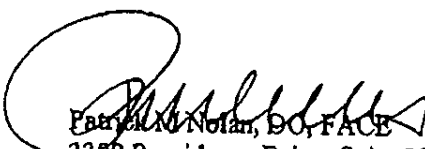
Thank you for listening to my comments. As a physician, specializing in endocrinology, I am distressed at the physical alterations that can occur in an aging nursing workforce while their hours and demands steadily rise. It is no secret that the population of America is aging. In Alaska the average age 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.
17535 Santa Maria Drive
Eagle River, Alaska 99577
907 301-2238

Senner * PO Box 102264, Anchorage, AK 99510
907-243-8044 * senfam@acsalaska.net

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.

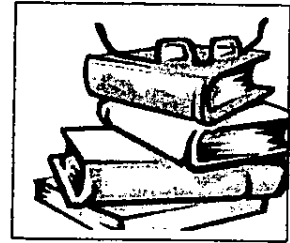
I ask you to support legislation that would ban mandatory overtime for nurses. Instead, support nursing education opportunities and we will continue to bring bright and motivated caregivers into the healthcare field.

Thank you for your consideration.

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

LAUREE MORTON

1802 Glacier Highway
Juneau, Alaska 99801
(936) 553-5241
lauree@gci.net



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

P.O. Box 20891
Juneau, Alaska 99802-0891
www.akwomenslobby.org

2009 AWL Steering Committee Members

Caren Robinson
Lobbyist

Geran Tarr,
Chair

Jayne Andreen

Nancy Courtney

Grace Danborn

Torie Foote

Cady Lister

Patricia Macklin

Rebecca Madison

Lauree Morton

Jorden Nigro

Taber Rehbaum

Nancy Scheetz-
Freymler

Libby Silberling

Rose Wysocki

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 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

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

Date: 2/11/09

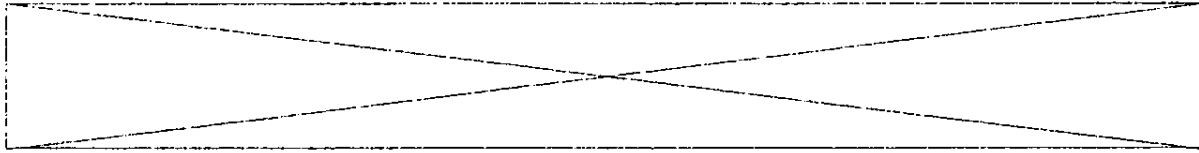
Re: HB50/SB12

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



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New Focus on Averting Errors: Hospital Culture

By LAURA LANDRO



Errors made by doctors, nurses and other medical caregivers cause 44,000 to 98,000 deaths a year. Hospital infections, many considered preventable, take another 100,000 lives. And mistakes involving medications injure 1.3 million patients annually in the U.S., according to the Food and Drug Administration.

Hospitals are taking what might seem like a surprising approach to confronting the problem: Not only are they trying to improve safety and reduce malpractice claims, they're also coming up with procedures for handling—and even consoling—staffers who make inadvertent mistakes.

The National Quality Forum, a government-advisory body that sets voluntary safety standards for hospitals, has developed a Care of the Caregiver standard, calling on hospitals to treat traumatized staffers involved in errors as patients requiring care, then involving them in the investigation of what went wrong if their behavior was not found to be reckless or intentional. Just Culture, a model developed by engineer David Marx, stresses finding a middle ground between a blame-free culture, which attributes all errors to system failure and says no individual is held accountable, and overly punitive culture, where individuals are blamed for all mistakes.

A new study published in the April edition of the Joint Commission Journal on Quality and Patient Safety, which examines one fatal medical mistake to analyze what went wrong, shows how assigning blame for errors can be a murky exercise.

Four years ago, nurse Julie Thao mistook a bag of epidural painkiller for penicillin and hooked it up to an IV line that pumped the painkiller—meant to be injected into the spine later—into the bloodstream of Jasmine Gant, a 16-year-old who was about to deliver a baby at St. Mary's Hospital in Madison, Wis. The teen's heart collapsed. Her baby was delivered successfully by emergency Caesarean section, but Ms. Gant didn't survive. Ms. Thao says she was fired from the hospital after the death, and she was later prosecuted by the state for criminal negligence. Ms. Thao's case has helped galvanize efforts to ensure that caregivers are treated fairly—without absolving them of responsibility for risky behavior.

The study, led by researchers at the non-profit Institute for Safe Medication Practices, concludes that while Ms. Thao consciously bypassed multiple safety procedures, there were also a host of system flaws that allowed and even encouraged her to do so, contributing to the fatal error.

Researchers found that Ms. Thao failed to put an identification bracelet on her patient or use the hospital's bar-coding system, designed to match the right medication to the right patient. But the bar-coding system had glitches, and nurses hadn't been adequately trained on it, so they often bypassed it.

Both medications—which looked alike—were brought into the patient's room before orders were given, a violation of policy. Fatigue increased Ms. Thao's likelihood of making a mistake, the study found. Ms. Thao had worked two

consecutive eight-hour shifts the day before and then slept in the hospital before coming on duty again the next morning, but there were no rules at the hospital to prevent her from being overworked.

In editorials accompanying the study, patient-safety experts, including Charles Denham, co-chairman of a National Quality Forum safe-practices committee, and Harvard University health-policy professor Lucian Leape are harshly critical of the way Ms. Thao was fired by the hospital and then left to fend for herself with no income and no financial resources to defend herself in charges later brought by the state. "We all believe that Julie should be held accountable for her behavior, but she didn't receive support from her organization or treatment that was just," says Dr. Denham. "It is clear that other nurses might have made the same error due to the social conditions and technical systems in the hospital.

Officials at St. Mary's, which paid \$1.9 million to settle a malpractice suit brought by Ms. Gant's family, say they treated Ms. Thao properly. The hospital's president, Frank Byrne declines to discuss the specifics of Ms. Thao's dismissal, but says the hospital was supportive; when it learned the state planned to bring criminal charges, Dr. Byrne says he did everything he could to stop it and appeared at court proceedings to lend moral support. He included his own commentary in the patient-safety journal, describing safety steps taken after Ms. Gant's death, including limiting work hours for nurses. "We never attempted to shirk acknowledgment of our system issues," he says.

In Ms. Thao's case, under a plea agreement, felony charges were amended to two misdemeanor counts. Afterward, her nursing license was suspended and she was barred for several years from working for any hospital that accepts federal funding from Medicare.

Safety advocates and nursing groups also question the use of criminal charges brought against nurses and doctors who make unintentional mistakes, saying they set a chilling precedent. "Criminal accusations against health care providers who work in a system set up to fail are extreme," says Sue Sheridan, co-founder of Consumers Advancing Patient Safety. "By the same token, there has to be some accountability when families have suffered a tragic loss."

Dr. Denham took Ms. Thao on as a patient-safety fellow in his own medical-research concern, TMIT, for two years. He now retains her to do contract patient-safety research. Ms. Thao, who was briefly hospitalized for depression after the event, says she considered taking her own life. She says her patient-safety work has helped her to cope with her despair over her errors.

"Every hospital in America is wrestling with how to hold practitioners accountable for key safety behaviors," says Mr. Marx, whose company, Outcome Engineering, consults with hospitals, states and nursing boards on the Just Culture Model and helped train 20,000 employees at St. Mary's after the Thao case. It's designed to "address risky behaviors before they lead to the death of a patient," he says, coaching those who make risky decisions, such as failing to wash hands before touching patients or skipping important checks in administering medications.

"We know just punishing human error does not improve safety," says St. Mary's Dr. Byrne. "But we have to separate unavoidable error from reckless behavior and unjustifiable risk."

Write to Laura Landro at laura.landro@wsj.com

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