SB

12

SENATE COMMITTEE REPORT
First Committee of Referral

DATE: 1/21/09

FURTHER: Labor and Commerce
Finance

Date of 5-Day Notice: _____
(in accordance with Uniform Rule 23)

DATE TURNED IN TO OFFICE: 3/25/09

Health and Social Services Committee considered SENATE BILL NO. 12

SB 12 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:
[ ] Same Title
[ ] New Title

HOUSE BILL:
[ ] Same Title
[ ] Technical Title Change
[ ] New Title w/ SCR #_____

NEW FISCAL NOTE(S):

Department	Date	Fiscal	Indet	Zero	FN#
DHS/N	3/6/09			✓	1
OHS/PH	3/6/09			✓	2
COR/oc	2/20/09			✓	3
LWF/WH	3/5/09	✓			4
DHS/API	3/9/09			✓	5

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Indet	Zero	FN#

[ ] **APPROPRIATION - no fiscal note**

SIGNATURES AND RECOMMENDATIONS:	PRINTED LAST NAME	DO PASS	DO NOT PASS	NO REC	AMEND
	Thomas				✓
	Dyson				✓
	Paskvan				X
CHAIR: Betty Davis	DAVIS	✓			

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Alaska State Legislature

Interim: (May - Dec.)
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Senator_Bettye_Davis@legis.state.ak.us
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Senator Bettye Davis

Senate Bill 12 26-LS0075\R

"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."

Sponsor Statement

SB 12 prevents registered nurses and licensed practical nurses from being forced to work mandatory overtime, *i.e.,* work beyond an agreed to, predetermined, regularly scheduled shift, and it protects patients from the dangers caused by overworked nurses. Senate Bill 12 is applicable to all hospitals and health care facilities licensed in Alaska. Under SB 12 a nurse may not be required or coerced directly or indirectly to work more than 14 consecutive hours without 10 hours of rest; beyond 80 hours in a 14-day period; or to accept an assignment of overtime if, in the judgment of the nurse, the overtime would jeopardize patient or employee safety. Nurses, however, 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.

In recognizing the complexity in delivering quality nursing care on a 24-hour basis, a number of concessions have been made to Alaska hospitals in this bill. The 14-hour maximum workday with 10 hours rest, which exceeds that allowed in many other states, permits a two-hour transition for nursing supervisors to call in additional help after 12-hour shifts. This provision was intended to help remedy the problem of nurses being called back to work without adequate rest after working a 12-hour shift. Also, exceptions have been provided for flight nurses on medical transport, school nurses on school sponsored field trips, and official state emergencies. This bill limits hospital reporting of hours to twice a year; it eliminates triple-time penalties for egregious violations; it limits maximum fines; and it requires enforcement for only "knowing" violations.

There are few official overtime complaints by nurses due to constant attention to patients, busy and varied schedules, and to some extent, fear of direct or indirect retaliation by employers. Many nurses testified to overwork, fatigue, disruption of family life, unexpected shift changes, mandatory overtime, and mandatory on-call over the course of several hearings on a similar bill, SB 28, in the 25th Legislature. Low numbers of complaints and benign exit interviews may belie growing dissatisfaction with the difficult work life of nurses, many of whom report "burn-out" and are leaving the profession.

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It has been estimated that 500,000 licensed registered nurses have left or are not working in the profession. There are bills in Congress to stem the nursing shortage, including financial aid for education, and more rigorous regulation of overtime hours, *e.g.,* H.R. 2122, and S.1842 in the 110th Congress, and before that, H.R. 791, "The Safe Nursing and Patient Care Act." The *Journal of the American Medical Association*, October 23-30, 2002, reported that nurses who suffer from fatigue, increased patient work-loads, and shifts in excess of 12 hours greatly increase nursing errors and mortality among patients who have common surgeries. Both nurses and employers alike state that patient safety is paramount, but nurses are allowed to work far beyond their endurance levels, depending on age and condition, unlike other safety-sensitive jobs, including commercial airline pilots, FAA controllers, railroad engineers, and long-haul truckers.

The nursing profession must attract more young people to replace the aging nurses' workforce which nationwide averages 46 years of age and is 95% women. In 2000 only 9% of RNs were under age 25, compared to 25% in 1980. Women are finding alternative career choices, so it is important for the nursing profession to create more jobs for nurses with higher wages, greater responsibilities, and better quality of work life. Although the University of Alaska has made great progress in increasing the numbers of nursing graduates in Alaska and in improving nursing programs at all levels, these efforts can only be successful through employment and retention if the nursing profession can provide a quality of life comparable to that in other competitive fields. SB 12 will help remedy this problem by encouraging employers to employ more nurses rather using mandatory overtime and mandatory on-call with short staffs to fill both routine and critical care positions on a regular basis. The greatest beneficiaries will be the patients who will receive the care and safety they deserve.

Alaska State Legislature

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Senator_Bettye_Davis@legis.state.ak.us
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Senator Bettye Davis

Senate Bill 12

"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."

Sectional Analysis

Note: As a preliminary matter, this sectional analysis should not be considered an authoritative interpretation of the bill; the bill itself is the best statement of its contents.

Section 1. Adds a temporary law section on legislative findings and intent concerning administration of overtime provisions in the nursing profession.

Section 2. Adds an "Article 4" to AS 18.20 that includes the following sections concerning working hours for nurses:

Sec. 18.20.0400. Subsection (a) prohibits the use of direct or indirect coercion to cause a nurse in a health care facility to:

(1) "work beyond a predetermined and regularly scheduled shift that is agreed to by the nurse and the health care facility;
(2) work beyond 80 hours in a 14-day period; or to
(3) accept an assignment of overtime if, in the judgment of the nurse, the overtime would jeopardize patient or employee safety."

Subsection (b) requires that the nurse shall not have less than 10 consecutive hours of off-duty time immediately following the end of work on a predetermined and regularly scheduled shift agreed to by the nurse and the health care facility.
Subsection (c) lists exceptions to subsection (a).

Sec. 18.20.410 Provides an anonymous process by which a patient or nurse may make a complaint about staffing levels and patient safety that relates to overtime work by nurses;

Sec. 18.20.420 Provides enforcement; lists offenses and penalties for violations;

Sec. 18.20.430 Prohibits retaliation for reporting alleged violations.

Sec. 18.20.440 Provides enforcement against prohibition of retaliation. Requires the Commissioner of Labor and Workforce Development to investigate all complaints and provide to the complainant a written determination within 90 days.

Sec. 18.20.445 Provides semiannual reporting requirements

Sec. 18.30.449 Defines key words, including "health care facility," "nurse," "on-call," and "overtime."

Section 3. Requires that if the bill becomes law the filing of the first semi-annual reports under AS 18.20.445 must be filed before February 1, 2010 for the period July 1, 2009 through December 31, 2009.

Section 4. requires that the reporting requirements of AS 18.20.445 take effect July 1, 2009.

Section 5. provides that except as provided in sec. 4 of this Act, this Act takes effect January 1, 2010.

FISCAL NOTE

STATE OF ALASKA
2009 LEGISLATIVE SESSION

Fiscal Note Number:
Bill Version: SB012
() Publish Date:

Identifier (file name): SB012-DHSS-N-03-06-09
Dept. Affected: Health & Social Services
Title: Limit Overtime for Registered Nurses
RDU: Public Health
Component: Nursing
Sponsor: Davis
Requester: Senate HSS
Component Number:

Expenditures/Revenues (Thousands of Dollars)

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

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

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 3/6/09 12:00 AM

Approved by: Alison Elgee, Assistant Commissioner
Date 3/6/2009
DHSS Finance & Management Services

(Revised 9/10/2008 OMB)

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FISCAL NOTE

STATE OF ALASKA
2009 LEGISLATIVE SESSION

Fiscal Note Number:
Bill Version: SB012
() Publish Date:

Identifier (file name): SB012-DHSS-API-03-09-09
Dept. Affected: Health & Social Services
Title: Limit Overtime for Registered Nurses
RDU: Behavioral Health
Component: Alaska Psychiatric Institute
Sponsor: Davis
Requester: Senate HSS
Component Number: 311

Expenditures/Revenues (Thousands of Dollars)

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

	Appropriation Required	Information					
OPERATING EXPENDITURES	**FY 2010**	**FY 2010**	**FY 2011**	**FY 2012**	**FY 2013**	**FY 2014**	**FY 2015**
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							
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		2.0	2.0	2.0	2.0	2.0	2.0
Part-time							
Temporary							

ANALYSIS: *(Attach a separate page if necessary)*

SB12 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 SB12 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 conjunction with the Department of Administration, Division of Personnel and Labor Relations, a

Prepared by: Melissa Stone, Director
Phone 269-3410
Division: Behavioral Health
Date/Time 3/9/09 11:30 AM

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

(Revised 9/10/2008 OMB)

FISCAL NOTE

STATE OF ALASKA

2009 LEGISLATIVE SESSION

BILL NO. SB012

ANALYSIS CONTINUATION

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
2009 LEGISLATIVE SESSION

Fiscal Note Number:
Bill Version: SB012
() Publish Date:

Identifier (file name): SB012-DHSS-API-03-06-09
Dept. Affected: Health & Social Services
Title: Limit Overtime for Registered Nurses
RDU: Behavioral Health
Component: Alaska Psychiatric Institute
Sponsor: Davis
Requester: Senate HSS
Component Number:

Expenditures/Revenues (Thousands of Dollars)

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

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

SB12 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 SB12 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 requesting voluntary overtime. Changes in the pay to nurses and new management strategies have resulted in the limited use of mandatory overtime, and does not pose a significant burden to API. The semi-annual reporting requirement costs will be absorbed by the division.

See update

Prepared by: Melissa Stone, Director
Phone 465-2817
Division: Behavioral Health
Date/Time 3/6/09 12:00 AM

Approved by: Alison Elgee, Assistant Commissioner
Date 3/6/2009
DHSS Finance & Management Services

(Revised 9/10/2008 OMB)

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FISCAL NOTE

STATE OF ALASKA
2009 LEGISLATIVE SESSION

Fiscal Note Number:
Bill Version: SB012
() Publish Date:

Identifier (file name): SB012-DHSS-PH-03-06-09
Dept. Affected: Health & Social Services
Title: Limit Overtime for Registered Nurses
RDU: Alaskan Pioneer Homes
Component: Pioneers Homes
Sponsor: Davis
Requester: Senate HSS
Component Number:

Expenditures/Revenues (Thousands of Dollars)

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

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

SB 12 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 SB12 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 3/6/09 12:00 AM

Approved by: Alison Elgee, Assistant Commissioner — Date 3/6/2009
DHSS Finance & Management Services

(Revised 9/10/2008 OMB)

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FISCAL NOTE

STATE OF ALASKA
2009 LEGISLATIVE SESSION

Fiscal Note Number:
Bill Version: **SB 12**
() Publish Date:

Identifier (file name): SB012-DOLWD-WH-03-05-09
Title: Limit Overtime for Registered Nurses
Sponsor: Senator Davis
Requester: Senate Health and Social Services

Dept. Affected: Labor and Workforce Development
RDU: Labor Standard & Safety
Component: Wage and Hour
Component Number: 345

Expenditures/Revenues (Thousands of Dollars)

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

	Appropriation Required	Information					
OPERATING EXPENDITURES	**FY 2010**	**FY 2010**	**FY 2011**	**FY 2012**	**FY 2013**	**FY 2014**	**FY 2015**
Personal Services	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
Contractual	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
Equipment							
Land & Structures							
Grants & Claims							
Miscellaneous							
TOTAL OPERATING	**99.3**	**0.0**	**96.0**	**96.0**	**97.3**	**96.0**	**96.0**
CAPITAL EXPENDITURES							
CHANGE IN REVENUES ( )							

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
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**

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 — Phone 465-4855
Division: Labor Standard & Safety — Date/Time 3/5/09 2:51 PM
Approved by: Click Bishop, Commissioner — Date 3/5/09
Agency: Department of Labor and Workforce Development

(Revised 9/2008 OMB)

FISCAL NOTE

STATE OF ALASKA
2009 LEGISLATIVE SESSION

Fiscal Note Number:
Bill Version: SB12-DOC-OC-02-20-09
() Publish Date:

Identifier (file name): SB12-DOC-OC-02-20-09
Dept. Affected: DOC
Title "Act relating to limitations on mandatory overtime for registered nurses and licensed practical nurses in health care facilities; ...."
RDU Adminstration & Support
Component Office of the Commissioner
Sponsor Senator Davis
Requester Governor
Component Number 694

Expenditures/Revenues (Thousands of Dollars)

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

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

SB12 would place limitations on mandatory overtime for registered nurses and licensed practical nurses within health care facilities.

Passage of this legislation should have no impact to the Department of Corrections.

Prepared by: Leslie Houston, Director
Phone (907) 465-3339
Division Administration and Support
Date/Time 2/20/2009 17:54:00 PM
Approved by: Dwayne Peeples, Deputy Commissioner
Date 2/20/2009
Department of Corrections

(Revised 9/10/2008 OMB)

3042

26-LS0075\R.1
Wayne
2/5/09

AMENDMENT

OFFERED IN THE SENATE BY SENATOR DAVIS

TO: SB 12

Page 3, following line 16:

Insert a new paragraph to read:

"(7) a nurse at a residential psychiatric treatment center who agrees to work under a contract that requires the employer to provide full-time pay and benefits equivalent to the pay and benefits for a 40-hour workweek if the nurse works a weekend schedule of four eight-hour shifts with not more than 16 consecutive hours on duty without a break of at least eight hours; in this paragraph, "residential psychiatric treatment center" has the meaning given in AS 18.07.111 and "weekend" means the period that begins Friday at 5:00 p.m. and ends Monday at 8:00 a.m.;"

Renumber the following paragraph accordingly.

Lynda Zaugg

From: Thomas Obermeyer
Sent: Monday, February 09, 2009 8:27 AM
To: Sen. Bettye Davis; Lynda Zaugg; Don Burrell
Subject: FW: Final Answer from Hospitals

From: mshickey@gci.net [mailto:mshickey@gci.net]
Sent: Sunday, February 08, 2009 1:07 PM
To: Thomas Obermeyer
Subject: Final Answer from Hospitals

Tom,

Rod Betit called me on Friday afternoon and said it's a **no go** on working something out. Believe Rod made a good faith effort, but think it was just a stall tactic by the hospitals. Please let Senator Davis know. We are proceeding to put in the hard push. I'll keep you posted.

Am curious if there's any feedback from the recent visit by Providence?

Mark

Re Navos - bill

Lynda Zaugg

From: Patrick Higgins [Patrick.Higgins@uhsinc.com]
Sent: Tuesday, March 24, 2009 1:50 PM
To: Thomas Obermeyer
Cc: Sen. Bettye Davis; raygillespie@ak.net
Subject: nurses overtime bill SB 12

Tom, our nurses love our Baylor plan and we use it at both our hospital and residential treatment centers. This plan is used for both full and part-time employees. An employee who regularly works only one weekend Baylor shift (16 hours) receives 20 hours pay and part-time benefits. If they work two Baylor shifts (32 hours) they receive 40 hours pay and full time benefits. I provided language earlier and at one time last year Senator Davis' bill exempted our Baylor plan.

I would propose the following language.

"A nurse at a psychiatric treatment hospital or residential treatment center who agrees to work two consecutive eight hour shifts on weekends, provided the employer provides pay and benefits equivalent to twenty hours for each two consecutive shifts. A nurse that works four eight hours shifts cannot work more than 16 consecutive hours on duty without a break of at least eight hours. In this paragraph, a weekend means Friday at 5:00 p.m. and ends Monday at 8:00 a.m."

Thanks. Feel free to call me on my cell, 952-5871, if you have any questions.

Pat

Patrick Higgins
HR Director
Northstar Behavioral Health
2530 DeBarr Rd.
Anchorage, Alaska 99508

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Nurse 01

Bill Text 26th Legislature

HOUSE BILL NO. 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."

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

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

LEGISLATIVE FINDINGS AND INTENT. The legislature finds that

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

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

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

(4) it is necessary to safeguard the efficiency, health, and general well-being of registered nurses and licensed practical nurses, and the health and general well-being of the persons receiving care from registered nurses and licensed practical nurses in health care facilities;

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

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

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

Article 4. Overtime Limitations for Nurses.

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

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

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

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

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

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

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

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

(3) a nurse on duty in overtime status because of an unforeseen emergency situation that could jeopardize patient safety; in this paragraph, "unforeseen emergency situation" means an unusual, unpredictable, or unforeseen situation caused by an act of terrorism, disease outbreak, 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;

(4) a nurse fulfilling on-call time that is agreed on by the nurse and a health care facility before it is scheduled;

(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;

(7) the first hour on overtime status when the health care facility is obtaining another nurse to work in place of the nurse in overtime status.

Sec. 18.20.410. 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. 18.20.420. Enforcement, offenses, and penalties. (a) The commissioner shall administer AS 18.20.400 - 18.20.449 and adopt regulations for implementing and enforcing AS 18.20.400 - 18.20.449.

(b) A complaint alleging a violation of AS 18.20.400 - 18.20.449 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 - 18.20.449, the following civil penalties shall apply:

(1) for a first violation of AS 18.20.400 - 18.20.449, the commissioner shall reprimand the health care facility;

(2) for a second violation of AS 18.20.400 - 18.20.449 within 12 months, the commissioner shall reprimand the health care facility and assess a penalty of $500;

(3) for a third violation of AS 18.20.400 - 18.20.449 within 12 months, the commissioner shall reprimand the health care facility and assess a penalty of not less than $2,500 but not more than $5,000;

(4) for each violation of AS 18.20.400 - 18.20.449 after a third violation of AS 18.20.400 - 18.20.449 within 12 months, the commissioner shall reprimand the health care facility and assess a penalty of not less than $5,000 but not more than $25,000.

(d) As an employer, a health care facility violates an overtime provision of AS 18.20.400 - 18.20.449 "knowingly" when the facility is either aware that its conduct is of a nature prohibited by the overtime provision or aware that the circumstances described in the overtime prohibition exist; however, when knowledge of the existence of a particular fact is required to establish that the violation was knowing, that knowledge exists when the facility is aware of a substantial probability of its existence, unless the facility reasonably believes it does not exist.

Sec. 18.20.430. Prohibition of retaliation. A health care facility may not discharge, discipline, threaten, discriminate against, penalize, or file a report with the Board of Nursing against a nurse for exercising rights under AS 18.20.400 - 18.20.449 or for the good faith reporting of an alleged violation of AS 18.20.400 - 18.20.449.

Sec. 18.20.440. Enforcement of prohibition against retaliation. The commissioner shall investigate every complaint alleging a violation of AS 18.20.430, and, within 90 days after the date of filing of the complaint, provide to the complainant, the Department of Law, and the health care facility named in the complaint a written determination as to whether the health care facility violated AS 18.20.430. If the commissioner finds a violation of AS 18.20.430, the commissioner shall request that the Department of Law represent the department and the complainant and obtain from the health care facility all appropriate relief, including rehiring or reinstatement of the complainant to the complainant's former position with back pay.

Sec. 18.20.445. Report requirements. A health care facility shall file with the division of labor standards and safety, Department of Labor and Workforce Development, a semiannual report. The report for the six-month period ending June 30 must be filed before the following August 1, and the report for the six-month period ending December 31 must be filed before the following February 1. The report must include, for each nurse employed by the health care facility or under contract with the health care facility, the number of overtime hours worked, the number of overtime hours that were mandatory, the number of overtime hours that were voluntary, the number of on-call hours, the number of on-call hours that were mandatory, and the number of on-call hours that were voluntary.

Sec. 18.20.449. Definitions. In AS 18.20.400 - 18.20.449,

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

(2) "health care facility" means a private, municipal, state, or federal hospital; psychiatric hospital; independent diagnostic testing facility; residential psychiatric treatment center, as defined in AS 18.07.111; skilled nursing facility; kidney disease treatment center, including freestanding hemodialysis units; intermediate care facility; ambulatory surgical facility; Alaska Pioneers' Home or Alaska Veterans' Home administered by the Department of Health and Social Services under AS 47.55; correctional facility owned or administered by the state; juvenile detention facility, juvenile detention home, juvenile work camp, or treatment facility, as defined in AS 47.12.990; private, municipal, state, or federal facility employing one or more public health nurses; long-term care facility; or primary care outpatient facility;

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

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

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

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

APPLICABILITY. The first report required to be filed under AS 18.20.445, enacted in sec. 2 of this Act, shall be filed before February 1, 2010, for the period July 1, 2009, through December 31, 2009.

* **Sec. 4.** AS 18.20.445, 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.

Alaska State Legislature
State Capitol
Juneau, AK 99801
907 465-3822 office
907 465-3756 fax
From the Office of Senator Bettye Davis

To: Legal Services **Fax:** 465-2029; phone: 465-2450

From: Thomas S. Obermeyer **Date:** 2/4/2009

Re: Cancel request 2/3/09 for CS for SB 12, 26-LS0075\R Nurses' Mandatory Overtime- **Instead:**

REQUEST FOR ONLY ONE AMENDMENT

Pages: ___ page(s) including cover

CC:

Urgent [X] **For Review** ☐ **Please Comment** **Please Reply** ☐ **Please Recycle**

February 4, 2009

To Whom It May Concern:

PLEASE CANCEL previous request 2/3/09 for CS for SB 12, 26-LS0075\R Nurses' overtime. **Instead**, please draft an amendment identical to exception #7 (attached) found in last version of SB 28: HS CS for CS for SB 28(HES), 25-LS0212\R, Section 2(c)(7), page 3, lines 15-20 which reads:

SB 28, 26-LS0075\R Amendment 1:

"(7) a nurse at a residential psychiatric treatment center who agrees to work under a contract that requires the employer to provide full-time pay and benefits equivalent to the pay and benefits for a 40-hour workweek if the nurse works a weekend schedule of four eight-hour shifts with not more than 16 consecutive hours on duty without a break of at least eight hours; in this paragraph, a "weekend" means the period that begins Friday at 5:00 p.m. and ends Monday at 8:00 a.m.;"

Please call if you have questions.
Tom Obermeyer, phone: 465-3762

ALASKA NATIVE MEDICAL CENTER

Pat Jackson

FOR IMMEDIATE RELEASE

Brandy M. Dixon, 907.729.1967

Alaska's only Magnet Status Hospital Retains Distinction

Alaska Native Medical Center wins highest honor in nursing excellence – *Again!*

Anchorage, AK – Jan. 19, 2009 – For the second time, the Alaska Native Medical Center (ANMC) has earned the highest honor offered by the American Nurses Credentialing Center (ANCC). ANCC is the world's largest and most prestigious nurse credentialing organization.

ANMC first earned this distinction in 2003, and remains the first and only hospital in Alaska, and the first and only tribal hospital in the nation to receive Magnet Status. According to ANCC, fewer than 5 percent of hospitals nationwide achieve Magnet Status, and even fewer achieve re-designation.

"This award validates the outstanding care our employees provide to our patients every single day. We've set the standard in Alaska – now we're going to set the standard in the country," said Alaska Native Tribal Health Consortium Chief Executive Officer Don Kashevaroff.

"It's an honor to work with such a dedicated team of professionals whose expertise and pursuit of excellence is evident in everything they do," said ANMC Chief Nurse Executive Kathy Hillburn. "For all patients who come here and those already in our care, our Magnet designation assures them that ANMC's healthcare is of the highest quality in the nation."

The call announcing the designation came via a speaker phone surrounded by anxious staff members who work at ANMC. They burst into cheers upon hearing the good news from Gail Wolf, chairwoman of the Commission on Magnet Recognition.

In her phone call, Wolf said "in recognizing quality patient care, nursing excellence, and innovations in professional nursing practice, the Magnet Recognition Program gives consumers the ultimate benchmark to measure the quality of care that they can expect to receive."

When U.S. News & World Report publishes its annual showcase of America's Best Hospitals" status as a Nurse Magnet™ facility contributes to the total score for quality of inpatient care. Of the hospitals listed on the exclusive 2007 Honor Roll (July 23, 2007), seven of the top ten were Magnet hospitals. (For more information on Magnet status, visit ancc.org.)

# # #

The Alaska Native Tribal Health Consortium and Southcentral Foundation jointly own and manage ANMC under the terms of Public Law 105-83. These parent organizations have established a Joint Operating Board to ensure unified operation of health services provided by the Medical Center.

Alaska State Legislature
State Capitol
Juneau, AK 99801
907 465-3822 office
907 465-3756 fax
From the Office of Senator Bettye Davis

To:	Legal Services	**Fax:**	**465-2029; phone: 465-2450**
From:	Thomas S. Obermeyer	**Date:**	2/3/2009
Re:	CS for SB 12, 26-LS0075\R Nurses' Mandatory Overtime	**Pages:**	_1_ page(s) including cover
CC:			

Urgent **[X] For Review** **☐ Please Comment** **Please Reply** **☐ Please Recycle**

February 3, 2009
To Whom It May Concern:

Please draft a committee substitute for SB 12, 26-LS0075\R, to add back a formerly included clause which had been removed in the present draft of exceptions to overtime limitations, ref: Sec. 18.20.400(c). This clause presently is mirrored in HB 51, 26-LS0288\R, page 3, lines 16-22 and is quoted below:

"(7) a nurse at a residential psychiatric treatment center who agrees to work under a contract that requires the employer to provide full-time pay and benefits equivalent to the pay and benefits for a 40-hour workweek if the nurse works a weekend schedule of four eight-hour shifts with not more than 16 consecutive hours on duty without a break of at least eight hours; in this paragraph, a "weekend" mean the period that begins Friday at 5:00 p.m. and ends Monday at 8:00 a.m.;"

When complete and delivered, please e-mail me a pdf of the same:
Thomas_Obermeyer@legis.state.ak.us.

Thank you. Please call if you have any questions.

Tom

Tom Obermeyer
465-3762

3050

Alaska Nurses Association

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Mandatory Overtime Legislation: A positive approach to improved patient care for the State of Alaska

January 2008

Executive Summary

Robert Steinbrook, MD, begins his report in the New England Journal of Medicine about nurses this way: "Nursing is an embattled profession." (2002). Since the Institute of Medicine Report (IOM) in 1996 and this article in 2002, many states have taken positive steps to stop the hemorrhaging of seasoned, experienced professional registered nurses from the workforce and to add more, younger energetic people to the mix. The same can be said of other health professionals such as pharmacists, certain physician specialties, and health care professionals in general. How the states are accomplishing this is through positive legislative efforts evidencing a sincere desire for improved working conditions and health care environments.

In the nursing profession, states that have passed legislation in four main target areas are having the most success in retaining and drawing registered nurses to employment. The four legislative areas include but are not limited to: banning mandatory overtime, safe patient handling, staffing ratio systems, and increasing scholarship funds.

In this context, we will discuss the necessity of banning mandatory overtime and/or mandatory call as a first step in advancing the retention of professional registered nurses in the State of Alaska.

Background

The population in Alaska as well as the rest of the United States is aging. Registered nurses (RN's) are aging as well. In 2000, the average age of the RN was 45. Today that age is 46 and remains 95 percent female; in Alaska, the average age is 48 (2007 Alaska Senate Testimony by AaNA). At the same time, the IOM report concluded that "women are finding other choices". Dr. Steinbrook quoted Frank Sloan of Duke University and co-chair of the committee of the IOM that reported on nursing as saying, nursing "is a very stressful job with a very flat career path." Dr. Steinbrook continued by noting RN's are discontented for many reasons including inadequate levels of staffing for both nurses and support staff and excessive workloads. That discontent goes beyond the RN's according to the April 2002 report of the American Hospital Association's Commission on Workforce for Hospitals and Health Systems. That report notes, "Most health care professionals entered their profession to make a difference through personal interaction with people in need. Today many in direct patient care feel tired and burned out from a stressful, often understaffed environment, with little or no time to experience the one-on-one caring that should be the heart of hospital employment."

Linda H. Aiken of the University of Pennsylvania School of Nursing notes that, "There is a sense that nursing is becoming an impossible job, and that nurses have no control over things that are required to provide good patient care. Yet nurses are accountable for the health and welfare of their patients." Combine this feeling with an aging work force and the future looks bleak. In 2000, only 9 percent of RN's were less than 30 years of age, as

compared with 25 percent in 1980. According to Buerhaus et al in their 2000 JAMA article, by 2020 a shortage of more than 400,000 RN's is possible. The Bureau of Labor Statistics estimates that the United States will need an additional 1.1 million registered nurses by 2014.

Ann Converso, Vice-President of the UAN, when addressing the 6th International Conference on Occupational Stress and Health, March 2, 2006 noted: **"In one of the latest Institute of Medicine reports, they found that work shifts longer than twelve hours per day endanger patient safety due to fatigue, causing reduced attention span and capacity to catch errors. However, the same study found that 27 percent of full-time hospital and nursing home nurses reported working more than 13 consecutive hours one or more times 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."**

Through it all, the worst case scenario is a tired, over-extended health care professional administering care to a patient.

Statement of the Problem

In October of 2007, the Alaska Statewide Nurses Conference was held in Anchorage. Over 120 nurses attended over a three day period representing RN's from Kotzebue to Ketchikan. Every staff nurse in attendance agreed that mandatory overtime is a curtailment to the working environment. Over 50 nurses (a majority of the staff nurses present) indicated that not only have they been asked to work overtime in the past three months, many indicated they had to take mandatory call. Several nurses indicated that "not only does it mess with your family life; you really worry about patient safety when you're so exhausted." In the instance of mandatory call, the RN may or may not be called to work, but must curtail personal/family time above and beyond the normal work time just in case they're needed for work. In many cases, the callback occurs within a few hours of completing a regular-12 hour shift – resulting in working more than 14 hours within a 24-hour period. Most facilities do provide incentives for on-call pay and on-call return to work status, but it continues to remain a way to staff facilities across the state without hiring more RN's.

Upon further questioning of the staff nurses at the Statewide Conference, 100 percent indicated that mandatory overtime, if used and maintained in their workplace, would cause them to leave the profession early and/or look for employment elsewhere. Several nurses with spouses in other professions noted their spouses have time curtailments in their work areas for safety, especially pilots and truck drivers. "You'd think the same people who set those limits would worry if their grandmother was in the hospital being treated by someone who had been there for over 14 hours." one nurse said. At meetings held between AaNA members, staff, hospital managers and administrators during the fall and winter of 2007, no one could say overtime does not exist and no one could guarantee mandatory overtime or mandatory call didn't occur at times.

In her testimony to the House Ways and Means Committee in Washington, D.C., Mary Foley, President of the American Nurses Association, stated, "By far the riskiest result of understaffing is the abuse of mandatory overtime as a staffing tool" (2002). According to a study published by the American Association of Nurse Executives, 61 percent of respondent RN's said they had observed increases in overtime or double shifts during the past year (2002).

Solutions

Around the country, **California, Washington, Oregon, Missouri, Texas, Connecticut, Illinois, Maine, Minnesota, New Hampshire, New Jersey, and West Virginia have all passed legislation limiting nurses to 12 hour shifts with mandatory rest periods prior to another work time. Rhode Island's legislature just passed the same legislation on an override of a governor's veto.** New York and Pennsylvania are poised to pass the legislation this year. Congress has HR2122 and S1842 pending with the support of the United American Nurses and the American Nurses Association.

"In the long term, the future of the nursing profession is related to its ability to attract more young nurses, to support the careers of current nurses, and to create more jobs for nurses with higher wages, and greater responsibilities. Such efforts can be successful only if the positions students are training to fill are sufficiently attractive, as compared with the alternatives in other fields." (Steinbrook, 2002)

In Alaska we are on the cusp of a legislative effort to begin making a true commitment to the professional registered nurse. **The current version of Senate Bill 28 actually provides for an extended work period up to 14 hours to assist hospitals that routinely schedule nurses for 12-hour shifts. The legislation also provides for an exemption from this limitation to address legitimate, unforeseeable emergencies. The Alaska Nurses Association urges the passing of this legislation as an effort to retain nurses in the state, increase the incentives to new nurses, and most importantly assist with improved patient safety.**

ANA
AMERICAN NURSES ASSOCIATION

Mandatory Overtime

Position

ANA opposes the use of mandatory overtime as a staffing tool.

Background

Nurses report a dramatic increase in the use of mandatory overtime as a staffing tool and fear potential consequences for the safety and quality of care provided to their patients. Today, overtime (mandatory and voluntary) is the most common method facilities use to cover staffing insufficiencies. In fact, some employers have described mandatory overtime as a staffing model and have actually coined the term "mandation" to define the methodology. Many nurses contend employers insist they work an extra shift (or more) or face dismissal for insubordination and being reported to the state board of nursing for patient abandonment.

Federal regulations place limits on the amount of time that can be worked in other industries in which the work directly affects public safety (e.g., aviation and transportation). Those regulations also set requirements for defined periods of time that workers must rest or be off duty before returning to work. Health care is exempt from such overtime regulations.

A few United American Nurse bargaining units have been successful in negotiating limits on mandatory overtime. In fact, concerns about the effects of mandatory overtime were central concerns in recent strikes in Washington, D.C., Minnesota, and New York.

Rationale

The American Nurses Association (ANA) is concerned about the impact of mandatory overtime on the ability of our nation's acute care nurses to provide high-quality health care services. ANA believes that the elimination of mandatory overtime for the nation's nurses is a critical step in efforts to improve the quality of health care and reduce medical errors. Following are a few facts about the dangers of forced overtime:

- Nurses are, in general, an aging workforce. The average working nurse is slightly over 43 years of age.
- Increased reliance on mandatory overtime has occurred at the same time that patient acuity has increased, the use of sophisticated technology has increased, and the length of hospital stay has decreased.
- Research in 1977 by Dawson and Reid at the University of Australia showed that "work performance is more likely to be impaired by moderate fatigue than by alcohol consumption." Their research shows that workers staying awake for long periods pose significant safety risks.
- Sleep loss influences several aspects of performance, slowing thinking and reaction time, delaying responses, causing failure to respond when appropriate or false responses, and diminishing memory, among others.

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What will legislation regulating mandatory overtime really do?

The mandatory overtime legislation being suggested does not prohibit nurses from working overtime. It will discourage an employer from assigning mandatory overtime and will prohibit an employer from threatening or retaliating against a nurse who refuses overtime. It will support the nurse who believes patient care would be compromised if that nurse is forced to work overtime. We must be able to count on the professional nurses who are providing care to make the judgment call about whether or not they are safe to practice.

Basic Facts on Mandatory Overtime

In the United States there has been an overall increase in overtime hours for all American workers over the last two decades. Almost one third of the workforce regularly works more than 40-hours a week and one fifth work more than 50 hours. It has been no different in health care where working overtime is becoming an every day occurrence. "Time after Time: Mandatory Overtime in the US Economy" Briefing Paper. January 2002. 1

"Mandatory overtime hours" are those hours above an agreed upon, predetermined, regularly scheduled shift, that the employer makes compulsory (as opposed to voluntary) with the threat of job loss or reprisals such as discharge, discipline, demotion or assignment to unattractive tasks or work shifts or in some cases licensure removal, retaliatory reporting, and charges of "abandonment". RN schedules are often 12, 10 or 8 hour shifts and some nurses do not get overtime for staying additional time unless they have reached 40 hours in one week. For example, a RN could work their regular 8 hour shift, but then be mandated to work an additional 8 hours for a total of 16, but not qualify for overtime pay.

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1 - 18 page report available at http://www.epinet.org/briefingpapers/120/bp120.pdf

A recent study, published in July 2004, shows a strong link between medical errors and the long work hours of nurses and it has called on congress to take action on the Safe Nursing and Patient Care Act (H.R. 745, S. 373), which would strictly limit the use of mandatory overtime for nurses. 5

Ann E Rogers, Wei-Ting Hwang, Linda D. Scott, Linda H. Aiken, and David F. Dinges did an important study called, "The Working Hours Of Hospital Staff Nurses And Patient Safety", which was published in the July/August issue of Health Affairs6

This study found that the risk of making an error was three times higher when nurses had to work shifts that were longer than 12 hours, when they worked significant overtime or when they worked more than 40 hours in a week. Working overtime increased the odds of making at least one error, regardless of how long the shift was originally scheduled. Fatigue related to working overtime was identified as the cause of approximately 12% of the absences reported by a random sample of Canadian staff nurses.

This reported outcome reinforced the findings of the 2003 Institute of Medicine Report, "Keeping Patients Safe: Transforming the Work Environment of Nurses" (7), which also said that nurses' long working hours pose a serious threat to patient safety.

...And Because We Are Losing Nurses

Mandatory overtime is one of the main reasons nurses leave nursing. Recent studies indicate that one in five nurses are considering leaving nursing. When polled on their reasons for leaving, mandatory overtime is always listed in the top ten reasons. In the face of a severe nursing shortage, we need to keep nurses at the bedside.

Surveys have shown that the exodus of registered nurses, therapists, technologists, technicians and service and maintenance workers is directly attributable to difficult working conditions, including inadequate staffing, mandatory overtime and insufficient compensation. This is not expected to improve over the next decade because as well as leaving the bedside, much fewer numbers of people are looking to nursing as a career.

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5 Safe Nursing and Patient Care Act of 2003 (Introduced in Senate) [S.373.IS]
Safe Nursing and Patient Care Act of 2003 (Introduced in House)[H.R.745.IH]
http://thomas.loc.gov/cgi-bin/thomas

6 . Available for purchase at http://www.healthaffairs.org/ .

7 http://www.iom.edu/project.asp?id=4671

Retaliation by Employers

Nurses do suffer retaliation from employers for refusing to accept overtime hours. There are reports from all over the country. According to a report, The Minnesota Nurses Association has documented complaints from nurses who were threatened by their employer. These nurses were told that if they would not work additional shifts, they would be reported to the State Board of Nursing for "patient abandonment". While the Board does not view the refusal to accept additional shifts because of fatigue as "patient abandonment", the fear of such a complaint often compels nurses to work against their better judgment. Another form of retaliation is more direct and involves simply firing or suspending the nurse who refuses overtime. In this situation, the nurse is forced to choose between their ethical obligation to the patient to provide quality care and their livelihood. This is a choice that nurses should not have to make.

What is this term ABANDONMENT?

According to the New Jersey Board of Nursing, the term "patient abandonment" should be differentiated from the term "employment abandonment," which becomes a matter of the employer-employee relationship and not that of the Board of Nursing. It should be noted that from a regulatory perspective, in order for patient abandonment to occur, the nurse must have first accepted the patient assignment and established a nurse-patient relationship, then severed that nurse-patient relationship without giving reasonable notice to the appropriate person (supervisor, employer) so that arrangements can be made for continuation of nursing care by others. Providing appropriate nursing personnel to care for patients is the responsibility of the employer. Failure of a nurse to work beyond his/her scheduled shift, refusal to accept an assignment, refusal to float to another unit, refusal to report to work, and resigning without notice are examples of employment issues and not considered by the New Jersey Board to constitute patient abandonment.

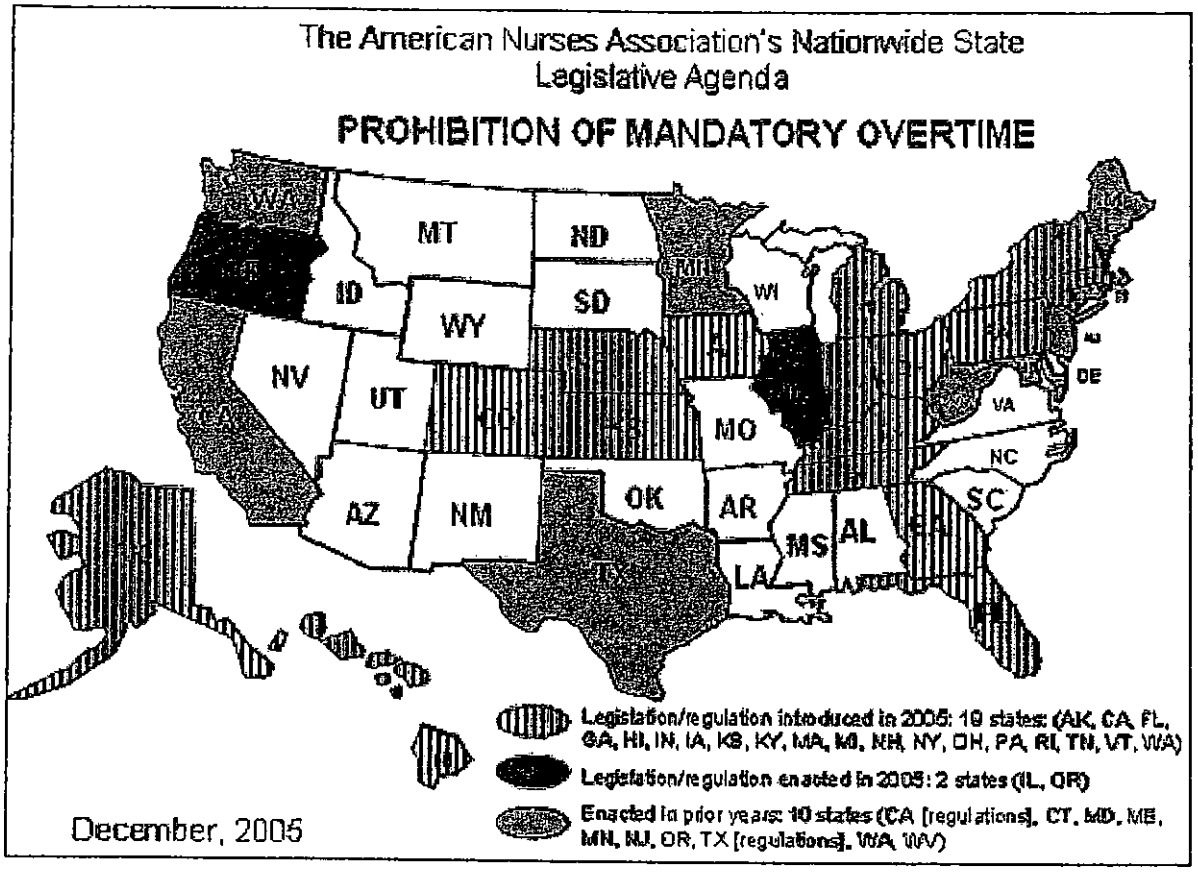
What are other states doing?

In 2003, three states, LA, NV and WV enacted legislation requiring the establishment of study committees to further explore the issue. 22 other states introduced prohibition of mandatory overtime legislation/regulation designed to set maximum hours of work per day/week with protected right of refusal for work time requested in excess of predetermined maximums.

Approximately 28+ states have completed or initiated steps toward legislation to restrict mandatory overtime for RNs, LPNs and, in some cases, all health care workers. In 2004, WV enacted legislation prohibiting a hospital from mandating a nurse to accept an assignment of overtime. CT enacted legislation that prohibits a hospital from requiring a nurse to work in excess of a predetermined scheduled work shift except in certain circumstances (emergency etc). Legislation was also introduced in FL, GA, HI, IA, IL, MA, MI, MO, NY, OH, PA, RI, TN, VT, and WA.

ANA State Government Relations

2005 Legislation: Mandatory Overtime (updated 12/05)



Background: Mandatory Overtime

Mandatory overtime is a difficult problem for RNs and health care facilities. Because of inadequate RN staffing, employers have used mandatory overtime to staff facilities often as a cost savings factor. Nurses are concerned about the health effects of long term overtime and the quality of care being provided. Research indicates that risks of making an error were significantly increased when work shifts were longer than 12 hours, when nurses worked overtime, or when they worked more than 40 hours per week[1].

As part of the American Nurses Association's (ANA) Nationwide State Legislative Agenda on the nurse staffing crisis, State Nurses Associations support the enactment of mandatory overtime legislation in state legislatures and regulatory agencies. ANA is also pursuing the enactment of federal legislation to prohibit mandatory overtime. The Safe Nursing and Patient Care Act of 2005 (HR

not to exceed 40 hours per week. **TX** regulations require hospitals to develop policy and procedures for mandatory overtime. **WA**'s new language states that acceptance of mandatory overtime by a nurse is strictly voluntary and refusal is not grounds for adverse actions against the nurse.

Legislation enacted in 2001 in **ME** would prevent a nurse from being disciplined for refusing to work more than 12 consecutive hours except in certain circumstances and must be given 10 consecutive hours off following overtime. **OR** enacted legislation prevents a nurse from being required to work more than 2 hours beyond a regularly scheduled shift or 16 hours in a 24 hour time period. Regulations adopted in **CA** prior to 2001 prevent an employee scheduled to work a 12 hour shift from working more than 12 hours in a 24 hour period except in a health care emergency.

[1] Rogers A, et al. The working hours of hospital staff nurses and patient safety. *Health Affairs* 2004;23(4):202-12.

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References

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AACN Public Policy

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Mandatory Overtime

A Statement from The American Association of Critical-Care Nurses (AACN)

BACKGROUND

Mandatory overtime is identified as a workplace issue and a patient safety issue. Mandatory overtime is the practice of hospitals and health care institutions to maintain adequate numbers of staff nurses through forced overtime, usually with a total of twelve to sixteen hours worked, with as little as one hour's notice. With mandatory overtime nurses are unable to refuse the required extra hours due to 1) fatigue, or 2) feeling that she/he would be unable to deliver adequate, safe patient care. This does not include overtime mandated in an unforeseen emergency, such as a mass casualty situation, or a sudden snowstorm. "On call" time is not included in this definition, unless the nurse's on call time is immediately before or after a scheduled shift, and it would force him or her to work a double shift.

THE ISSUE

The dramatic changes in the health care environment that have impacted nursing practice in recent years have come as managed care programs grew in dominance and federal Medicare and Medicaid reimbursements declined (Berens, M.J.). With the nursing shortage continuing, the growing trend is for hospitals to use mandatory overtime as a common staffing practice (ANA, June 2000).

Mandatory overtime may cause or lead to increased stress on the job, less patient comfort and mental and physical fatigue that can contribute to errors and "near-misses" with medications and case-related procedures. This is occurring as patient acuity has increased. The practice of mandatory overtime ignores the responsibilities nurses may have at home with children, other family members, or other obligations. Being forced into excessive overtime can cause an exhausted

a lower incidence of needlestick injuries among nurses was also noted. If mandatory overtime is allowed to continue, one could easily project:

1) Increase in medication errors,
2) Decrease in safe, quality patient care,
3) Decrease in patient satisfaction,
4) Increase in hospital length of stay,
5) Increase in mortality and morbidity,
6) Decrease in recruitment of new nurses,
7) Decrease in retention of nurses, and
8) Increase in legal liability issues against nurses.

LEGISLATIVE HISTORY

February 12, 2003 - Senator Edward M Kennedy re-introduced **S. 373, the Safe Nursing and Patient Care Act of 2003**, which amends title XVIII of the Social Security Act to provide for patient protection by limiting the number of mandatory overtime hours a nurse may be required to work in certain providers of services to which payments are made under the Medicare program. A companion bill, H.R. 745 was again re-introduced in the House by Representative Pete Stark. The bills are currently in committee.

November 14, 2001- Senator Edward M Kennedy, introduced **S. 1686 "The Safe Nursing and Patient Care Act of 2001"** which was referred to the Committee on Finance. The bill would amend title XVIII of the Social Security Act to provide for patient protection by limiting the number of mandatory overtime hours a nurse may be required to work in certain providers of services to which payments are made under the Medicare Program. and referred to the House Committee on Education and the Workforce and to the Subcommittee on Workforce Protections.

September 15, 2000- H.R. 5179 "The Registered Nurses and Patients Protection Act" was introduced into the U.S. House of Representatives by Rep.Tom Lantos (D-Calif.). The bill would amend the Fair Labor Standards Act so that no RN would be required to work beyond eight hours in any workday or 80 hours in any 14-day work period. This legislation was not acted on in the 106th Congress and Lantos reintroduced the bill **(H.R. 1289)** in the 107th Congress where it was referred to the House Committee on Education and the Workforce and to the Subcommittee on Workforce Protections.

AACN's POSITION

AACN believes that mandatory overtime is not an acceptable means of staffing a hospital, because it may place nurses and their patients at increased risk of being involved in medical errors. Instead, nurses should be able to decide whether working overtime will affect their ability to care safely and effectively for patients. They should have the option of refusing overtime assignments and not be forced into working beyond their capacity to provide optimal care. AACN supports this legislation and will continue to work to educate the public on the negative impact that mandatory overtime can have on patient safety.

RN to practice unsafe patient care, jeopardizing her nursing licensure status. Impact is felt at the level of the bedside nurse in three major areas identified through current literature: medication errors, quality patient care, and nurses' legal liability.

Medication Errors - The Institute of Medicine's report *To Err is Human: Building a Safer Health System* (IOM, 12/1999) states the deaths from medication errors that take place both in and out of hospitals, more than 7000 annually, exceed those from workplace injuries. In a separate report, investigation by the Chicago-Tribune states that since 1995, at least 1,720 hospital patients have died and 9,548 others have been injured because of mistakes made by RN's across the country (Associated Press, 9/10/2000).

Quality Patient Care - As the nurse-to-patient ratio worsens, and as patient acuity increases, hospital management is free to demand that nurses work mandatory sixteen-hour shifts, with one-hour notice (MNA, 4/3/2000). In a 1989 article published in the Journal of Occupational Health and Safety, the author stated, "Once a shift exceeds twelve consecutive hours, acute fatigue sets in. A worker may still be able to perform routine tasks, but his brain waves exhibit a pattern of stage one alpha sleep. Errors made in this stage are frequently major, since the worker tends to perform the opposite of the correct action."

Legal Liability - Nurses practice under each state's Nurse Practice Act, which govern nursing practice. Most nurse practice acts state that nurses are held accountable for the safety of their patients. Thus, if a nurse accepts a patient assignment and something untoward happens to that patient, the nurse is liable under her license. Once a nurse accepts an assignment, her license can be in jeopardy if she is unable to deliver safe patient care.

Implications of Change - If mandatory overtime is legally banned in all states, 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.

ANA's recent study, *Nurse Staffing and Patient Outcomes in the Inpatient Hospital Setting* (3/2000), tracks five adverse outcomes measures that can be mitigated if adequate patient staffing is provided: hospital length of stay, nosocomial pneumonia, postoperative infections, pressure ulcers, and nosocomial urinary tract infections. With sufficient nurse staffing, time is available for more thorough patient assessment and interventions to improve outcomes.

The American Academy of Nursing (AAN) conducted research in the 80's, which has had several follow-up studies since, which reinforce the original findings of researcher Linda Aiken. Her research affirmed that specific organizational variables create a milieu that not only attracts nurses, but also create practice environments that provide better outcomes for patients. "Magnet facilities" have higher nurse-staffing levels, and lower mortality and morbidity rates, shorter length of stay, and lower utilization of ICU days. In the 1999 follow-up research,

WHAT YOU CAN DO

Work with the administrators in your facility to develop systems that support the delivery of quality care and a safe work environment.

Let your legislators know that this bill has strong support of nurses. Discuss with him or her:

Your concern that mandatory overtime is not an acceptable means of staffing a hospital because it can place nurses and their patients at increased risk for making errors.

The fact that studies have shown that when a worker (especially a health care worker) exceeds 12 hours of work, and is fatigued, the likelihood of their making an error increases. The IOM report on medication errors substantiates these findings, where the experts who compiled the report specifically recommended that safe staffing and limits on mandatory overtime are a component to preventing medication errors.

Explain RN accountability for the delivery of safe care and that nurses should not be forced into working beyond his or her capacity to provide optimal care without the right to refuse that assignment.

3/01
Revised 3/03

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JAMA study: High RN workloads impact mortality

Nurse researchers add more evidence to growing body of work on nurse staffing

In a new study looking at nursing care, University of Pennsylvania (Penn) researchers have determined that patients who have common surgeries in hospitals with the worst nurse staffing levels have up to a 31 percent increased chance of dying. Further, more nurses at the bedside could save thousands of patients' lives every year, report researchers in the Oct. 23-30 issue of the Journal of the *American Medical Association (JAMA).*

The researchers found that every additional patient in a hospital nurse's average workload increased the risk of death in surgical patients by seven percent. Patients with life-threatening complications also were less likely to be rescued in hospitals where nurses' patient loads were heavier.

"Nurses reported greater job dissatisfaction and emotional exhaustion when they're responsible for more patients that they can safely care for," said Pennsylvania State Nurses Association member Linda Aiken, PhD, RN, FAAN, director of the Center for Heath Outcomes and Policy Research at Penn's School of Nursing. Aiken, along with colleagues, conducted the study. "Failure to retain nurses contributes to avoidable patient deaths."

ANA President Barbara Blakeney, MS, APRN,BC, ANP, said: "This new study is dramatic because it highlights the fact that people can die when nursing care is inadequate. It is an important contribution, but frankly, this is something that nurses have known for years. Nurses make the critical, cost-effective difference in providing safe, high quality patient care."

Specifically, the Penn nursing researchers found that:

* If all hospitals in the nation staffed at eight patients per nurse rather than four, the risk of hospital deaths would increase by 31 percent, roughly translating to as many as 20,000 avoidable deaths in the United States annually.

* Having too few nurses may actually cost more because of the high costs of replacing burned-out nurses and the higher cost of caring for patients with poor outcomes.

* Adding two patients to a nurse already caring for four increases the risk of death by 14 percent.

The report, "Hospital Nurse Staff and Patient Mortality, Nurse Burnout and Job Dissatisfaction," concluded that, "When taken together, the impacts of staffing on patient and nurse outcomes suggest that by investing in registered nurse staffing, hospitals may avert both preventable mortality and ... problems with low nurse retention in hospital practice."

The study, funded by the National Institute of Nursing Research of the National Institutes of Health, examined data collected from 168 hospitals, 232,342 surgical patients, and 10,184 nurses in Pennsylvania from 1998 to 1999. They examined data on relatively common, general, orthopedic surgeries and vascular surgeries, excluding cardiac operations such as coronary bypass.

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ANA Press Release October 23, 2002

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JAMA Article Links Hospital Staffing and Patient Mortality, Nurse Burnout and Job Dissatisfaction

ANA's Blakeney calls on hospitals to utilize Principles for Nurse Staffing to address problem

Washington, DC -- A study published today in the Journal of the American Medical Association (JAMA) found that Registered Nurse (RN) staffing levels have a significant effect on preventable hospital deaths among surgical patients. According to researchers, the odds of patient mortality rose 7 percent for every additional patient added to the average nurses's workload. The difference between four to six and four to eight patients-per-nurse was accompanied by a 14 percent and 31 percent increase in mortality respectively. The study from the University of Pennsylvania affirms the critical role RNs play in patient safety when able to make direct assessments and life-saving interventions.

"This new study is dramatic because it highlights the fact that people can die when nursing care is inadequate," said Barbara A. Blakeney, MS, APRN,BC, ANP, president of the American Nurses Association (ANA). "It is an important contribution, but, frankly, this is something that nurses have known for years," she said. "Nurses make the critical, cost-effective difference in providing safe, high-quality patient care," she added. Blakeney pointed to ANA's own report, Nurse Staffing and Patient Outcomes in the Inpatient Hospital Setting," which was released in May 2000. The study looked at hospital and Medicare data in nine states in five categories of adverse outcomes: length of hospital stay, hospital-acquired pneumonia, postoperative infection, bed sores and hospital-acquired urinary tract infections. All five measures were markedly lower with higher levels of RN involvement in patient care. Two other studies published this year, one in the New England Journal of Medicine and one by the Joint Commission on the Accreditation of Healthcare Organizations (JCAHO), also found direct links between nurse staffing levels and better patient outcomes.

Today's JAMA article also reported that patient load had a direct impact on nurse retention rates. Adding one patient-per-nurse to a hospital's staffing level increased nurse burnout by 23 percent and job dissatisfaction by 15 percent. The data indicate that more than 40 percent of nurses who reported high burnout and job dissatisfaction intended to leave their job within the next year.

"Inappropriate staffing is the number one concern of nurses today," Blakeney said. "Nurses already face great stress and challenges on the job. They must care for greater numbers of patients than ever before and patients in hospitals are more acutely ill than in the past. Adequate nurse staffing is critical to the delivery of quality patient care because it allows nurses time for appropriate assessment of patients and their needs and initiation of suitable interventions."

Blakeney emphasized that nurses are dissatisfied because of a lack of control over their work environment which prevents them from delivering high-quality nursing care. In addition to the

right number and mix of direct care staff for hands-on care, other resources are necessary to support RNs' ability to deliver the best possible care. ANA has developed and strongly encourages the use of its Principles for Nurse Staffing, which include: nurse control over the practice environment; effective and efficient support services; readily available and current patient information; sufficient orientation and mentoring for new staff and new nursing graduates; education in the use of new technology; and sufficient time for collaboration, planning, coordination and delivery of care that meets both patient and family needs. Research has shown that hospitals which incorporate much of the philosophy embedded in the Principles for Nurse Staffing into their organizational culture and practice have higher rates of satisfaction and retention among nursing staff, and better outcomes for patients.

ANA is advocating for a comprehensive set of strategies to address the nurse staffing crisis, including state and federal legislation that would limit mandatory overtime, provide whistle-blower protections for nurses, mandate collection of workforce and nursing-sensitive quality data, establish patient staffing systems and provide funding for nursing education.

In addition, hospitals that utilize nursing "best practices" can apply for designation as "Magnet" facilities a recognition made by the American Nurses Credentialing Center, a subsidiary of ANA. Hospitals that have achieved "Magnet"status have higher retention rates for nurses and improved patient outcomes.

Many of the issues touched on in the JAMA study have been addressed in Nursing's Agenda for the Future (www.NursingWorld.org/naf). The plan, which was released in April, is the result of an in-depth strategic planning process that involved leaders from more than 60 national nursing organizations. It reflects the brain trust of nursing and includes strategies to address basic issues, such as recruitment, as well as more complex issues, such as the economic value of nursing.

The authors of the new JAMA study said that improving nurse staffing may not only save patient lives and decrease nurse turnover but also reduce hospital costs, if recently published estimates of the costs of replacing a hospital medical and surgical general unit and a specialty nurse ($42,000 to $64,000) are correct.

"Hospital Nurse Staffing and Patient Mortality, Nurse Burnout, and Job Dissatisfaction," by Linda H. Aiken, et. al, appears in the October 23/30, 2002 issue of JAMA. The study, funded by the National Institute of Nursing Research of the National Institutes of Health, looked at 232,342 patients between the ages of 20 and 85 who underwent general surgical, orthopaedic, or vascular procedures in 168 Pennsylvania hospitals from April 1, 1998, to Nov. 30, 1999.

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ANA is the only full-service professional organization representing the nation's 2.7 million Registered Nurses through its 54 constituent associations. ANA advances the nursing profession by fostering high standards of nursing practice, promoting the economic and general welfare of nurses in the workplace, projecting a positive and realistic view of nursing, and by lobbying the Congress and regulatory agencies on health care issues affecting nurses and the public.

The NEW ENGLAND JOURNAL of MEDICINE

SPECIAL ARTICLE

Number 22 Volume 346:1715-1722

May 30, 2002

Nurse-Staffing Levels and the Quality of Care in Hospitals

Jack Needleman, Ph.D., Peter Buerhaus, Ph.D., R.N., Soeren Mattke, M.D., M.P.H., Maureen Stewart, B.A., and Katya Zelevinsky

ABSTRACT

Background It is uncertain whether lower levels of staffing by nurses at hospitals are associated with an increased risk that patients will have complications or die.

Methods We used administrative data from 1997 for 799 hospitals in 11 states (covering 5,075,969 discharges of medical patients and 1,104,659 discharges of surgical patients) to examine the relation between the amount of care provided by nurses at the hospital and patients' outcomes. We conducted regression analyses in which we controlled for patients' risk of adverse outcomes, differences in the nursing care needed for each hospital's patients, and other variables.

Results The mean number of hours of nursing care per patient-day was 11.4, of which 7.8 hours were provided by registered nurses, 1.2 hours by licensed practical nurses, and 2.4 hours by nurses' aides. Among medical patients, a higher proportion of hours of care per day provided by registered nurses and a greater absolute number of hours of care per day provided by registered nurses were associated with a shorter length of stay ($P=0.01$ and $P<0.001$, respectively) and lower rates of both urinary tract infections ($P<0.001$ and $P=0.003$, respectively) and upper gastrointestinal bleeding ($P=0.03$ and $P=0.007$, respectively). A higher proportion of hours of care provided by registered nurses was also associated with lower rates of pneumonia ($P=0.001$), shock or cardiac arrest ($P=0.007$), and "failure to rescue," which was defined as death from pneumonia, shock or cardiac arrest, upper gastrointestinal bleeding, sepsis, or deep venous thrombosis ($P=0.05$). Among surgical patients, a higher proportion of care provided by registered nurses was associated with lower rates of urinary tract infections ($P=0.04$), and a greater number of hours of care per day provided by registered nurses was associated with lower rates of "failure to rescue" ($P=0.008$). We found no associations between increased levels of staffing by registered nurses and the rate of in-hospital death or between increased staffing by licensed practical nurses or nurses' aides and the rate of adverse outcomes.

Conclusions A higher proportion of hours of nursing care provided by registered nurses and a greater number of hours of care by registered nurses per day are associated with better care for hospitalized patients.

Source Information

From the Department of Health Policy and Management, Harvard School of Public Health, Boston (J.N., S.M., M.S., K.Z.); the Vanderbilt University School of Nursing, Nashville (P.B.); and Abt Associates, Cambridge, Mass. (S.M.).

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Nurses' Solutions to the Nurse Staffing Shortage
UAN National Sample Survey of Staff RNs

Key Findings and Talking Points for CMAs

The United American Nurses has conducted a national poll exclusively of hospital staff RNs on the front lines of direct patient care to spotlight their experience and expertise about the critical staffing shortage and how to solve it.

Lake Snell Perry and Associates, a leading national political and public policy research firm, designed and administered this survey which was conducted by phone using professional interviewers in November 2002. The survey reached 600 licensed hospital staff nurses who provide direct patient care.

1. **Problems in today's hospitals**

The nursing shortage is the top problem in hospitals today. Eight of ten nurses feel there is a serious shortage in their hospital.

When asked about the two biggest problems facing them, nurses identify the staffing shortage and inadequate wages as top concerns.

Other problems include:
Workload issues
Nurse to patient ratios
Stress and fatigue
Lack of respect and recognition
Long hours
Support from the administration
Quality of patient care
Turnover rate and retaining nurses

Time for patient care has decreased, according two-thirds of those surveyed (67%), and nearly four in ten nurses (38%) say less than half their day is spent on direct patient care. 31% say administrative reports and documentation take more than half their day.

2. **Why nurses leave the profession.**

Work-related stress, patient load, and inadequate pay are the top three reasons nurses leave the profession.
Three out of ten nurses say it's unlikely they will be a hospital staff nurse in five years.
The majority of nurses surveyed feel their hospital is doing only a fair to poor job attracting and retaining nurses.

3. **Solutions to the Nursing Shortage**

The best solutions are:
Increased pay (82%),
Reduced nurse patient ratios (85%)

Collectively, staff nurses have a lot of experience. Over a third (35%) have worked as a staff nurse for more than 20 years and 65% have more than 10 years experience. Only 12% have 5 years or less experience. The other side of that coin is that the lower percentages of less experienced nurses reflects fewer people entering the nursing profession now and foreshadows future shortages.

An overwhelming number (86%) say they would be confident having someone close to them receive care at the hospital in which they work. The fact that one of every ten (13%) said they would not is a strong reminder that patients need to choose hospitals carefully.

When asked about how good a place to work their hospital is, just over half (52%) said it was too good a place to work to leave. However, four out of ten (41%) said their hospital isn't a great place to work, but they probably would not leave and 5% said it was so bad a place to work that they definitely intend to leave.

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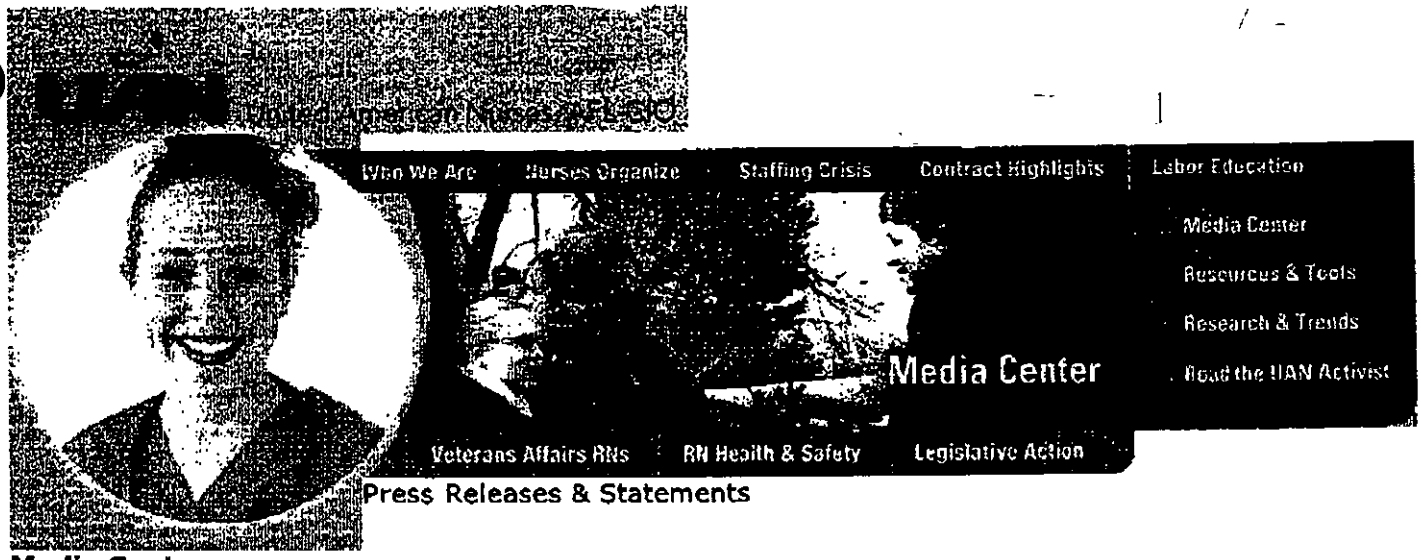

Press Releases & Statements

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Nurses in the News
UAN *Activist* Newsletter

UAN gives a voice to the issues that are important to staff nurses. Here's what UAN staff nurses are saying to the media, Congress and the public:

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FOR IMMEDIATE RELEASE: February 18th 2009

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Historic Pact Creates Largest RN Union Ever in U.S.

Powerful New Association of 150,000 RNs Joins to Organize All RNs, Promote Healthcare Justice

United American Nurses, California Nurses Assn/NNOC, and Massachusetts Nurses Assn Reach Landmark Accord

In a dramatic move to unite the power and influence of America's leading direct care RN organizations, the United American Nurses, California Nurses Association/National Nurses Organizing Committee, and the Massachusetts Nurses Association today announced they are joining together to form a new, 150,000-member association.

The new organization will be called the United American Nurses-National Nurses Organizing Committee, UAN-NNOC (AFL-CIO), the three said in a joint statement issued today.

"Under the principle that RNs should be represented by an RN union," the statement declared, "we resolve to create a new union of staff nurse-led organizations named UAN-NNOC" to:

1. "Build an RN movement in order to defend and advance the interests of direct care nurses across the country;
2. "Organize all non-union direct care RNs (a substantial majority of the budget shall be dedicated to new organizing);
3. "Provide a powerful national voice for RN rights, safe RN practice, including RN-to-patient staffing ratios under the principle that safe staffing saves lives, and health care justice;
4. "Provide a vehicle for solidarity with sister nurse and allied organizations around the world;
5. "Create a national Taft-Hartley pension for union RNs."

Central to the new organization is a guiding principle that all RNs "should be represented by an RN union," the joint statement declared.

Link to other years' news releases and statements:

- **2008**
- **2007**
- **2006**
- **2005**
- **2004**
- **2003**
- **2002**

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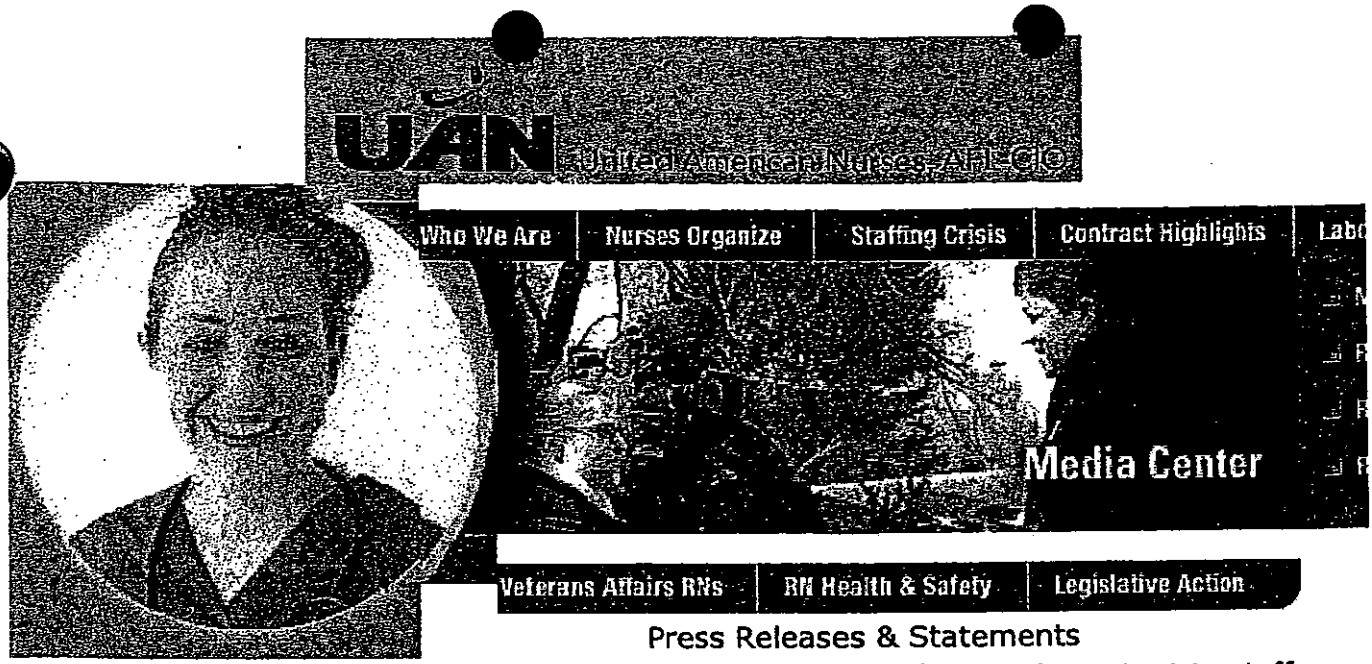

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Press Releases & Statements

UAN gives a voice to the issues that are important to staff nurses. Here's what UAN staff nurses are saying to the media, Congress and the public:

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FOR IMMEDIATE RELEASE: March 2nd 2006

UAN VP Converso's remarks to the Sixth International Conference on Stress and Health

THE OCCUPATIONAL SAFETY AND HEALTH IMPACTS OF INADEQUATE STAFFING AND MANDATORY OVERTIME ON REGISTERED NURSE

Ann Converso, RN, Vice President
United American Nurses, AFL-CIO

The Sixth International Conference on Occupational Stress and Health
March 2, 2006

Long hours of work, mandatory overtime, and inadequate staffing cause extreme stress to nurses, impacting their physical and mental health. They also ultimately affect the quality of patient care. Like many other industrialized nations, the United States is experiencing a severe shortage of nurses that will intensify as the baby boom

generation ages, with shortages currently in at least 30 states according to the Health Resources and Services Administration. The Bureau of Labor Statistics estimates that the United States will need an additional 1.1 million registered nurses by 2014.

At the same time, health care costs continue to rise. Managed care compels hospitals to discharge patients more rapidly, resulting in higher patient acuity levels. Hospitals attempt to control labor costs by reducing the number of registered nurses they employ. But cutting the number of nurses at the bedside is counterproductive as overworked nurses get injured or burned out and leave the professionóexacerbating the shortage of nurses.

A 2003 study by Aiken with Clarke, Sloane, Sochalski, and Silber found that higher emotional exhaustion and greater job dissatisfaction were strongly associated with higher nurse-to-patient ratios. Each additional patient per nurse correlated to a 23 percent increased risk of burnout, as well as a 15 percent increase in the risk of job dissatisfaction. Among the nurses surveyed in this study, 43 percent reporting job burnout and dissatisfaction stated that they intended to leave their current position within the year. When the United American Nurses surveyed hospital nurses in 2002 about staffing and job satisfaction issues, a third said they were likely to leave the profession within five years due to frustration about inadequate staffing and mandatory overtime.

How bad is the situation? Unfortunately, we do not have systematic national data on nurse-to-patient ratios and the hours worked by nurses. We are looking forward to a NIOSH study on the combined influence of shift work and overtime on nursesí health and safety.

In the interim, some studies on patient safety have shed light on nurse-to-patient ratios and hours of work. Patient safety has gotten a lot of attention since the Institute of Medicine announced in 1999 that approximately 98,000 people in the United States die annually due to hospital errors. In 2003, the IOM surveyed the literature on factors in the nursing profession and the impact on patient safety. They concluded that there is ample evidence that leaner nurse staffing and long work shifts are associated with errors and adverse reactions, such as post-operative infections, pneumonia, urinary tract infections, and increased length of hospital stay.

The IOM found that while the average registered nurse-to-patient ratio in medical-surgical units is one-to-six, 23

percent of hospitals reported that day shift registered nurses in medical-surgical units were responsible for seven to twelve patients. Night shift nurse-to-patient ratios are likely to be even poorer. In contrast to those staffing ratios, Aikenís study found that for each additional patient over four in a nurseís workload, the risk of death increased by seven percent for surgical patients.

The Institute of Medicine also found that work shifts longer than twelve hours per day endanger patient safety due to fatigue, causing reduced attention span and capacity to catch errors. However, the same study found that 27 percent of full-time hospital and nursing home nurses reported working more than 13 consecutive hours one or more times 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.

However, available data suggest that hospital staff nurses are working longer hours, with fewer breaks, with little time for recovery between shifts. A 2004 study by Rogers with Hwang, Scott, Aiken, and Dinges on the impact of long working hours on patient safety reveals excessively long work shifts among hospital nurses. In this study, 393 Registered nurses were asked to log their actual work times over a four-week period, providing 5,317 work shifts over 28 consecutive days to analyze.

- On average, the nurses in the study worked 55 minutes beyond their scheduled shift, of 8.5 or 12.5 hours. (An extra 30 minutes for the handover period at the end of shifts is already built into the schedule.)

- Nurses reported leaving work at the end of the scheduled shift less than 20 percent of the time during the study.

- Although 31 percent of the shifts were scheduled for 12.5 or more hours, the percentage of shifts that the nurses actually worked 12.5 or more hours was 39 percent.

- Fourteen percent of the respondents reported working 16 or more consecutive hours at least once during the four-week period. The longest shift recorded was 23 hours, 40 minutes.

- Almost two-thirds of the nurses worked overtime ten or more times during the period, and a third reported working overtime each day during the 28-day period.

- Not surprisingly, the risk of making an error increased with longer work hours and was three times higher when nurses worked 12.5 or more hours. Working overtime increased the odds of making at least one error, regardless of how long the shift was originally scheduled.

In addition to the pressure that registered nurses face to work overtime, many are required to be on call, especially those in specialized units. There is also anecdotal evidence that 24-hour shifts are becoming more common, particularly in emergency departments and on units where nurses self-schedule.

Beyond long work shifts and mandatory overtime, nurses face other scheduling issues that cause fatigue and stress as a result of being shift workers in a 24-hour-a-day industry. Nurses working night shifts struggle against their circadian rhythm, our biological tendency to sleep at night and be active during the day. The circadian rhythm makes it difficult to get enough restorative rest during the day and often requires night shift workers to miss out on activities with family and friends. Bureau of Labor Statistics injury data indicate that the risk of injury for all workers is substantially higher during the night shift than during the day or evening shifts. Risk of injury is nearly three times greater very early in the morning than at mid-afternoon, the low and high points of the circadian cycle.

Nurses have an even harder time if they work rotating schedules which prevent them from getting adequate rest between shifts. They are not just tired from not having enough sleep between shiftsótheir bodies have not had enough time to recuperate from the previous shift.

So what happens to these nurses who work such long hours and difficult schedules? We know that long hours of work, night shifts, or rotating shifts increase nursesí risk of musculoskeletal injuries by reducing the recovery time between shifts that nurses need to allow their backs to rest and heal. Nurses develop musculoskeletal injuries through the cumulative effect of repetitive actions, lifting

transferring patients, moving heavy, awkward equipment, and stretching to work in poorly designed spaces. The Bureau of Labor Statistics, which ranks occupations sustaining the most musculoskeletal injuries, ranked registered nursing eighth among all jobs in 2003. Fifty-two percent of registered nurses have chronic back pain and 38 percent have pain severe enough to require leave from work. Research by Lipscomb, Trinkoff, Geiger-Brown, and Brady in 2002 found that:

- Registered nurses working twelve or more hours per shift were at increased risk for musculoskeletal disorders compared to those working eight-hour shifts.

- Registered nurses working twelve or more hours per day and 40 or more hours per week doubled their odds of getting a back, neck, or shoulder injury.

- Registered nurses working nights or weekends also significantly increased their risk of musculoskeletal injuries, due in part to lower staffing levels on those shifts.

- Registered nurses working rotating shifts had twice the number of reported accidents as those working day or night shifts only.

- Another study by Gold found that nurses working rotating shifts had twice the number of reported accidents or errors related to sleepiness than nurses who worked only a day or an evening shift.

Of course, nurses face a number of occupational hazards beside musculoskeletal disorders. In one study by Macias, the number of needlestick injuries and incidents of biological fluid exposure increased in the last two hours of twelve-hour shifts, but no increase in these incidents was found in the last two hours of eight-hour shifts.

Other research indicates that as health care workersí work hours increase, car crashes and occupational accidents increase. Ninety-six percent of Intensive Care Unit nurses reported car crashes or near misses while driving home

after a night shift in a study by Novak and Auvil-Novak in 1996.

We know less about the cardiovascular impacts or psychological stress caused by inadequate staffing and long working hours among nurses, although there has been research indicating that shifts longer than eight hours increase the incidence of smoking. Overtime has been associated with unhealthy weight gain among nurses. Overtime, shifts over eight hours, and night shifts and rotating shifts longer than eight hours have been associated with higher alcohol consumption among nurses.

However, we do knowóbecause nurses have been voting with their feet, whether through strikes or by leaving hospital employment or the professionóthat the environment they work in is stressful. In a 1999 study by the Minnesota Nurses Association, an affiliate of United American Nurses, registered nurses expressed escalating frustration and concern about their ability to provide safe care to patients under short staffing situations. They reported a decrease in organizational support and peer support.

What is the solution? Hospitals are not going to solve this problem on their ownóotherwise, it would already be fixed. Nurses who are on the frontlines must be part of the solution and have a voice in decision-making. UAN nurses have negotiated a variety of remedies through contract language, such as:

- a prohibition on mandatory overtime,
- specific nurse-to-patient ratios,
- the authority to close a department to new admissions when staffing ratios are too high to be safe for patients,
- and the power to determine staffing levels based on patient acuity rather than just the number of patients.

However, contract language is not enoughówe need a legislative solution for all nurses, not just those who have

[redacted]n representation, and the state [redacted]islatures are beginning to address the issues.

Ten states have passed laws prohibiting the use of mandatory overtime for registered nurses and 14 other states have introduced legislation or are considering legislation on mandatory overtime. Illinoisí law ensures that a nurse will work no longer than four hours beyond the scheduled shift and requires an eight-hour rest period between shifts. Oregonís law prohibits hospitals from mandating nurses to work beyond 48 hours in a week or more than 12 consecutive hours in a 24-hour period.

Legislation requiring hospitals to develop and implement nurse staffing plans and include input from nurses has been passed in five states. Going beyond staffing plans, California enacted a nurse-to-patient ratio law in 1999, requiring one nurse for every six patients in medical-surgical units when it which went into effect in 2001. The law also provided that the ratio would be strengthened to one nurse for every five medical-surgical patients in 2005.

The United American Nurses supports two federal bills which would prohibit mandatory overtime and create minimum staffing ratios. The Safe Nursing and Patient Care Act of 2005, introduced by Senator Edward Kennedy, Democrat of Massachusetts and Representative Pete Stark, Democrat of California, would set strict limits on mandatory overtime for nurses. Nurses could not be forced to work beyond their scheduled shift, except in the event of a state of emergency declared by a local, state, or federal government. The bill also provides nurses with whistleblower protections.

UAN also supports the Nurse Staffing Standards for Patient Safety and Quality Care Act of 2005, sponsored by Representative Janice Schakowsky, which would establish federal minimum staffing nurse-to-patient ratios in all hospitals that receive federal funding, except during a declared emergency. This bill gives registered nurses and other health care workers a real voice in providing quality, safe health care. The bill also provides real penalties to hospitals that fail to comply and nurse whistleblower protections.

There are some people who say that staffing ratios wonít workóthat hospitals canít hire nurses who donít existóand that employing more registered nurses will increase health care costs even faster. But preliminary evidence from California and the state of Victoria in Australia, where ratios have been implemented, show that nurses who left

the profession will return, students will apply for nursing school, and nurses who are stressed will stay.

And a 2006 study by Needleman with Buerhaus, Stewart, Zelevinsky, and Mattke indicates that there is a business case for staffing ratios. They found that increasing the use of RNs to care for patients reduced costs by reducing patient complications and deaths and reducing patientsí time spent in the hospital.

Nursing, unlike other professions that impact public safety such as pilots and air traffic controllers, has been operating for generations without rules preventing them from working under unsafe conditionsóworking understaffed and fatigued. That needs to changeóconditions have only been getting worse due to the huge changes in health care and will worsen even more with the shortage of nurses. Nurses have been pushed too faróand we will no longer tolerate working understaffed and exhaustedóit is unsafe for our patients and it is unsafe for us.

Link to other years' news releases and statements:

- **2007**
- **2005**
- **2004**
- **2003**
- **2002**

United American Nurses, AFL-CIO
8515 Georgia Ave. Suite 400 | Silver Spring, MD 20910 Tel: 301.628.5118 | Fax: 301.628.5347

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UAN
UNITED AMERICAN NURSES, AFL-CIO

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Legislative Issue Brief

Safe Nursing and Patient Care Act of 2005 (H.R. 791/S. 351) -- Legislation to Strictly Limit Mandatory Overtime

ISSUES: Strictly limiting mandatory overtime for nurses is a critical step in improving the quality of health care and reducing medical errors. In its 1999 report "To Err is Human", the Institute of Medicine (IoM) estimated that as many as 98,000 hospitalized Americans die each year as a result of errors in their care. In a recent IoM study (2003) of nurses' role in patient safety, the report concluded that "evidence revealed that typical work environment of nurses is characterized by many serious threats to patient safety." The IoM report identifies long hours for nurses as one of the critical problems – "the long hours of some nurses represents on of the most serious threats."

Unlike many other major industries where public safety is a concern, health care is exempt from regulations which limit the use of overtime as a staffing tool. Mandatory overtime puts patients and nurses at risk for medical errors, as well driving registered nurses out of patient care. The effects of mandatory overtime were central issues in major RN strikes in Washington, D.C., Minnesota, Ohio, New York and Hawaii.

The UAN supports and is working on legislation that would eliminate mandatory overtime for registered nurses except in true emergencies.

STATUS: Senator Edward Kennedy (D-MA) and Representative Pete Stark (D-CA) have introduced the **"Safe Nursing and Patient Care Act of 2005" (H.R. 791/S. 351)** in the House and Senate. This legislation would:

- Set strict, new federal limits on the ability of health facilities to require mandatory overtime from nurses. Nurses would use their own professional judgment in deciding to volunteer for overtime But, forced mandatory overtime would only be allowed when an official state of emergency was declared by federal, state or local government;

- Provide HHS with the authority to investigate complaints from nurses about violations. It also grants HHS the power to issue civil monetary penalties of up to $10,000 for violations of the act and to increase those fines for patterns of violations;
- Require facilities to post notices explaining these new rights and to post nurse schedules in prominent workplace locations. Nurses would also receive anti-discrimination protections against employers who continue to force work hours for nurses beyond what a nurse believes is safe for quality care;
- Require the Agency on Healthcare Research and Quality to report back to Congress with recommendations for developing overall standards to protect patient safety in nursing care.

ACTION NEEDED: For those members of Congress who have not cosponsored H.R. 791/S. 351 as of yet, the UAN strongly urges them to do so. If members have already cosponsored this legislation, the UAN urges them to work for the final passage of H.R. 791/S. 351.

POLICY RATIONALE:

- A 2001 report by the General Accounting Office, Nursing Workforce: Emerging Nurse Shortages Due to Multiple Factors, concluded: [T]he current high levels of job dissatisfaction among nurses may also play a crucial role in determining the extent of current and future nurse shortages. Efforts undertaken to improve the workplace environment were reduce the likelihood of nurses leaving the field and encourage more young people to enter the nursing profession.....

- Current projections are that the nurse workforce in 2020 will have fallen 20 percent below the level necessary to meet demand.

- There currently exist government standards that limit the hours that pilots, flight attendants, truck drivers, railroad engineers and other professions can safely work before consumer safety is endangered. However, no similar limitation currently exists for our nation's nurses who are caring for patients.

I

109TH CONGRESS
1ST SESSION

H. R. 791

To amend title XVIII of the Social Security Act to provide for patient protection by limiting the number of mandatory overtime hours a nurse may be required to work in certain providers of services to which payments are made under the Medicare Program.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 14, 2005

Mr. STARK (for himself and Mr. LATOURETTE) introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committee on Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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A BILL

To amend title XVIII of the Social Security Act to provide for patient protection by limiting the number of mandatory overtime hours a nurse may be required to work in certain providers of services to which payments are made under the Medicare Program.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Safe Nursing and Patient Care Act of 2005".

(5) The dangers with mandatory overtime are made clear by numerous studies. A November 2003 Institute of Medicine report, Keeping Patients Safe: Transforming the Work Environment of Nurses, concluded that limiting the number of hours worked per day and consecutive days of work by nursing staff, as is done in other safety-sensitive industries, is a fundamental safety precaution. The report went on to specifically recommend that working more than 12 hours in any 24-hour period and more than 60 hours in any 7-day period be prevented except in case of an emergency, such as a natural disaster.

(6) Another study published in the July/August 2004 Health Affairs Journal, The Working Hours of Hospital Staff Nurses and Patient Safety, found that nurses who worked shifts of twelve and a half hours or more were three times more likely to commit an error than nurses who worked standard shifts of eight and a half hours or less. The study also found that working overtime increased the odds of making at least one error, regardless of how long the shift was originally scheduled.

(7) That same study also illustrates how nurses are being forced to work more and more overtime. The majority of nurses surveyed reported working

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, DO, FACE
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 o645 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

Senners * 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 is 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

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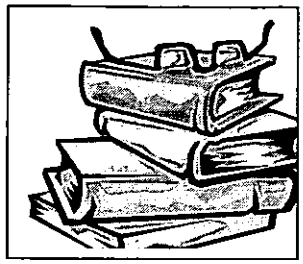

February 16, 2009

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

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

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Freymiller

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 14years 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 patients 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 travelors 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 nonsence, 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

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 patient[1] safety and encourages employers of registered nurses[2] 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).*

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[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.

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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/pubpolcy.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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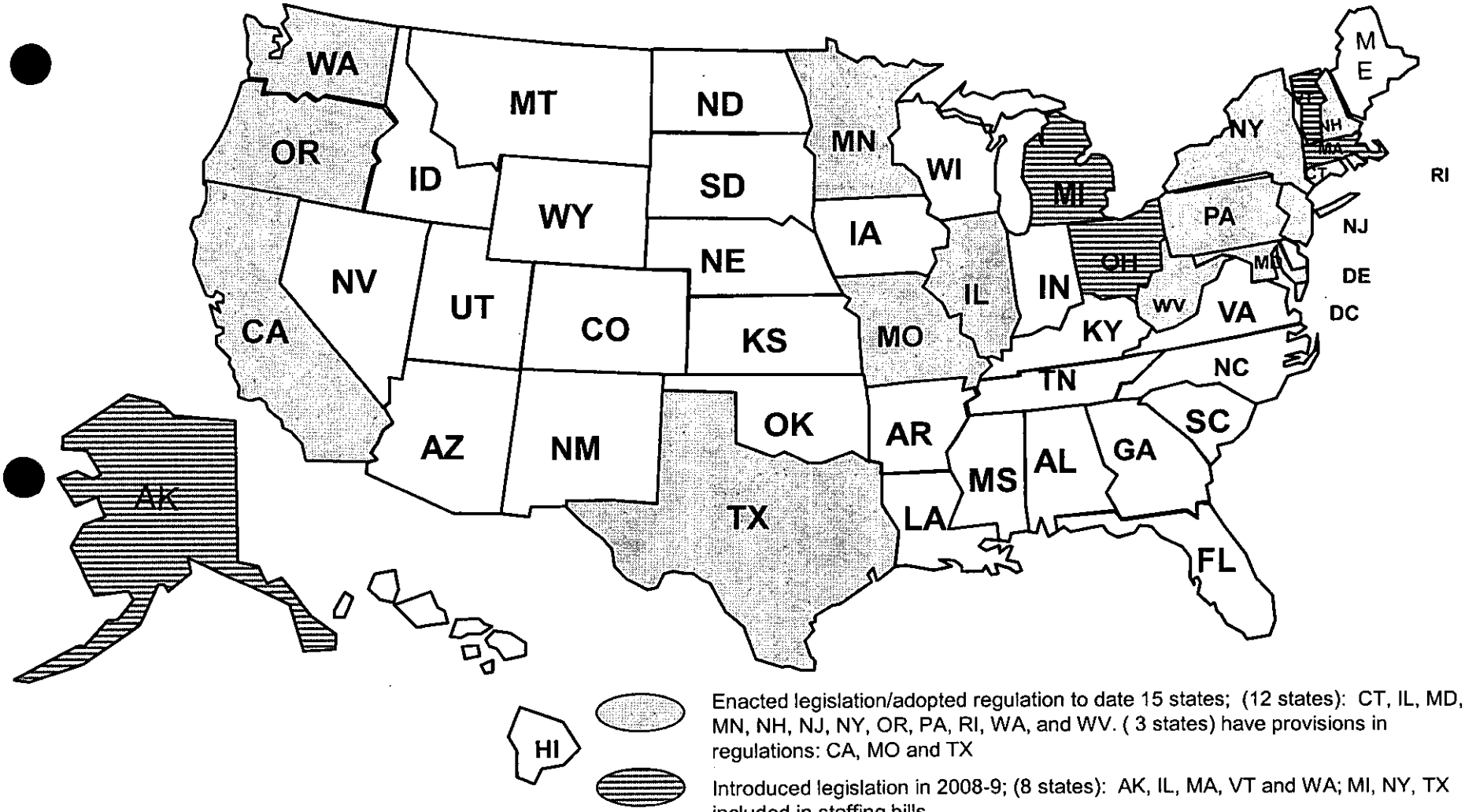
The American Nurses Association's Nationwide State Legislative Agenda

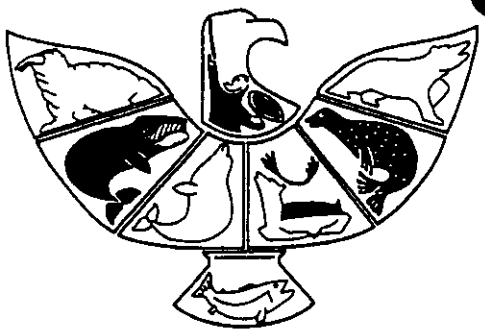
PROHIBITION OF MANDATORY OVERTIME



Enacted legislation/adopted regulation to date 15 states; (12 states): CT, IL, MD, MN, NH, NJ, NY, OR, PA, RI, WA, and WV. (3 states) have provisions in regulations: CA, MO and TX

Introduced legislation in 2008-9; (8 states): AK, IL, MA, VT and WA; MI, NY, TX included in staffing bills.

February 2009



Alaska Native Health Board

1840 Bragaw Street, Suite 220
Anchorage, Alaska 99508

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

Senator Bettye Davis, Chair
Senate Health & Social Services Committee
State Capital Building, Room 30
Juneau, Alaska 99801-1182

Dear Senator Davis,

We write to express our deep reservations over SB 12, 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 SB 12, as follows:

SB 12 will hurt patient care, especially in rural Alaska

In healthcare, the guiding principle is "do no harm." However, with SB 12, 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, SB 12 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 SB 12.

SB 12 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 SB 12, 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 SB 12 are intended to solve urban problems not applicable in Alaska

Legislation such as SB 12 has been adopted in only 15 States, nearly all urban, out of concerns 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.

SB 12'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.

SB 12 is unnecessary because mandatory nurse overtime 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 SB 12's proponents, is that *"there are few official overtime complaints by nurses..."*, and *"low numbers of complaints and benign exit interviews...."*

Senator Davis, we thank you for efforts on behalf of Alaska Tribal health providers. We appreciate this opportunity to express our concerns with SB 12, and we look forward to working with you in a cooperative manner on the many other important healthcare issues pending this session.

Respectfully,

Evangelyn Dotomain
President/CEO

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

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

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

[6] 25 USC § 450a(b).

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

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

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

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

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

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

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

[10] 29 USC § 201, *et seq.*

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

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

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

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

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

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

Conclusion

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

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

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

AaNA
Alaska Nurses Association

3701 E. Tudor Rd., Suite 208, Anchorage, AK 99507

Dangers of Mandatory Overtime:

FATIGUE and ERRORS

Support Senate Bill 12

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.

Source

Michigan Nurses Association Public Policy Associates, Incorporated –

The Costs of Mandatory Overtime for Nurses,

August 2004

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.

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' patients and themselves?

Washington State Passes Law in 2002

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

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

Washington State

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

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

Washington State

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

Massachusetts Study

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

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

States Which Ban or Limit Forced Overtime

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

Additional States Lining Up

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

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

States that have passed a Mandatory Overtime Bill & States with legislation pending

The American Nurses Association's Nationwide State Legislative Agenda

PROHIBITION OF MANDATORY OVERTIME

February 2009

Support Alaska Senate Bill 12

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.

Support Alaska Senate Bill 12

But with SB 12, a nurse will be able to say, "I have worked my shift; I'm tired; and possibly I'm not as swift as I would otherwise be if I had some rest. My patients could possibly be at risk if I push on any longer."

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 or loss of job.

Questions for you as Law Makers

- 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?
- The Federal Government has passed laws to limit the number of hours that pilots can safely fly, truckers can safely drive, conductors and engineers can drive a train and a ship - all for public safety. Why would we not try to do the same for people when they are at their most vulnerable?

3701 E.Tudor Rd., Suite 208, Anchorage, AK 99507

Questions for you as Lawmakers

- Do you think nurses should have the right to refuse an overtime assignment if they feel either the patient's or nurse's safety is in jeopardy other than during an unforeseen emergency?
- When you answer these questions, I hope that you will not only support SB 12, but also the nurses that have come forward with risk of their job and livelihood to provide quality patient care to you and your loved ones at one of the most vulnerable times.

We Urge Your Support for SB12

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.

AaNA
Alaska Nurses Association

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ASHNHA
Alaska State Hospital and Nursing Home Association

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TESTIMONY ON SENATE BILL 12

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).

Senate Bill 12 sponsor Senator Bettye Davis is well respected by *ASHNHA's* members for her commitment to improving health care access and quality in Alaska. We share Senator Davis' passion for increasing eligibility levels for Denali Kid Care to at least 200% of the federal poverty level, and in seeking creation of an Alaska Health Commission to address Alaska's health care issues.

However, *ASHNHA's* membership does not believe that Senate Bill 12 is needed to assure continued delivery of excellent patient care throughout the State, and therefore does not support Senate Bill 12. *ASHNHA's* members have had and will continue to have a strong 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. We believe our annual nurse overtime survey demonstrates that this commitment to our nursing staff and to our patients is being met.

ASHNHA has conducted a facility survey on mandatory overtime for the last four years 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. As displayed in the latest survey for 2007 and 2008 calendar years (copy attached), the number of mandatory overtime hours imposed is minimal and only occurs in a few facilities. Most of that mandatory overtime occurs at the State operated Alaska Psychiatric Institute but even that level of mandatory overtime usage is down substantially from 2006.

ASHNHA member facilities have taken a number of steps over the years to minimize the need to use mandatory overtime to fill gaps in nursing shifts. Some examples include:

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.

3160

Even with these initiatives approximately half of the facilities reporting on this year's survey believe the nursing shortage situation has worsened, and the solutions to address this shortage become more complex.

RECAP OF ASHNHA's CONCERNS with SB 12:

- *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). Most of this is at the State operated Alaska Psychiatric Institute. No employee grievances on overtime were reported for 2008 by facilities.

- *ASHNHA* believes 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.

- With respect to overtime required to meet on-call requirements, these understandings are locally developed between management and nursing in each community based on the unique needs and staffing challenges each face.

- 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.

- SB 28 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: rbetit@ashnha.com

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

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

ASHNHA 2007 and 2008 NURSE OVERTIME SURVEY RESULTS -
(March 6, 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	Worse	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	Data Not Available at This Time										
Fairbanks Memorial Hospital	No	Data Not Available at This Time										
Heritage Place Nursing Home	No	Response Combined with Central Peninsula Hospital										
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	8S9W3B		12.4%	10.0%	613.5	425.5			225,806	197,212	0

Lynda Zaugg

From: Patrick Higgins [Patrick.Higgins@uhsinc.com]
Sent: Tuesday, March 24, 2009 1:50 PM
To: Thomas Obermeyer
Cc: Sen. Bettye Davis; raygillespie@ak.net
Subject: nurses overtime bill SB 12

Tom, our nurses love our Baylor plan and we use it at both our hospital and residential treatment centers. This plan is used for both full and part-time employees. An employee who regularly works only one weekend Baylor shift (16 hours) receives 20 hours pay and part-time benefits. If they work two Baylor shifts (32 hours) they receive 40 hours pay and full time benefits. I provided language earlier and at one time last year Senator Davis' bill exempted our Baylor plan.

I would propose the following language.

"A nurse at a psychiatric treatment hospital or residential treatment center who agrees to work two consecutive eight hour shifts on weekends, provided the employer provides pay and benefits equivalent to twenty hours for each two consecutive shifts. A nurse that works four eight hours shifts cannot work more than 16 consecutive hours on duty without a break of at least eight hours. In this paragraph, a weekend means Friday at 5:00 p.m. and ends Monday at 8:00 a.m."

Thanks. Feel free to call me on my cell, 952-5871, if you have any questions.

Pat

Patrick Higgins
HR Director
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