



Mandatory Overtime Limitations for 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.

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.

Article 5. 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; or

(2) 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

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

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

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

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

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

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

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

patient care;

(7) a nurse who

(A) is employed

(i) at a psychiatric treatment hospital that treats only children or at a residential psychiatric treatment center, as defined under AS 18.07.111, that treats only children; in this sub-subparagraph, "children" means persons under 19 years of age who are receiving psychiatric treatment from a hospital or center or who are residing in a center and who were under 18 years of age on the date that the treatment or period of residence commenced;

(ii) at a residential psychiatric treatment center as defined under AS 47.32.900; or

(iii) at a secure residential psychiatric treatment center as defined under AS 47.12.990;

(B) voluntarily agrees to work a 16-hour shift for the period between 5:00 p.m. on a Friday and 8:00 a.m. on the Monday that immediately follows and receives pay and benefits for that work that are equal to or greater than the pay and benefits the nurse would receive for working 20 regular hours in the same position; and (C) during the period described in (B) of this paragraph does not work a 16-hour shift consecutive with another shift of eight hours or more without an intervening break of at least eight hours;

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

Sec. 18.20.410. Temporary nurse staffing emergency.

(a) If, after making a substantial and reasonable effort to increase the number of available nurses on staff and failing in that

effort, a health care facility in a rural community determines it is not able to meet the overtime limitations in AS 18.20.400 without putting the safety of its patients at risk of serious harm, the health care facility may declare a temporary nurse staffing emergency. A declaration of a temporary nurse staffing emergency under this section

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

(2) may not exceed 30 days.

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

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

Sec. 18.20.420. Health care facility complaint process for overtime work by nurses.

A health care facility shall provide for an anonymous process by which a patient or a

nurse may make a complaint about staffing levels and patient safety that relate to overtime work by nurses and to limitations on overtime work by nurses under AS 18.20.400.

Sec. 18.20.430. Enforcement, offenses, and penalties.

(a) The commissioner shall administer AS 18.20.400 - 18.20.499 and adopt regulations for implementing and enforcing AS 18.20.400 - 18.20.499.

(b) A complaint alleging a violation of AS 18.20.400 - 18.20.499 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 - 18.20.499, the following civil penalties apply:

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

(2) for a second violation of AS 18.20.400 - 18.20.499 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 - 18.20.499 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 - 18.20.499 after a third violation of AS 18.20.400 - 18.20.499 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 - 18.20.499 "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. 18.20.440. Prohibition of retaliation. A health care facility may not discharge, discipline, threaten, discriminate against, penalize, or file a report with the Board of Nursing against a nurse for exercising rights under AS 18.20.400 - 18.20.499 or for the good faith reporting of an alleged violation of AS 18.20.400 - 18.20.499.

Sec. 18.20.450. Report requirements.

(a) A health care facility shall file with the division of labor standards and safety, Department of Labor and Workforce Development, a semiannual report on a form provided by the department. The report for the six-month period ending June 30 must be filed before the following August 1, and the report for the six-month period ending December 31 must be filed before the following February 1. The report must include, for each nurse employed by the health care facility or under contract with the health care facility, the number of overtime hours worked and the number of hours the nurse was on call. A health care facility that does not employ a nurse who worked overtime hours or who was on call during the reporting period is not required to describe hours worked as overtime and on-call hours for individual nurses but may instead complete the report by stating on the form that there are no reportable hours.

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

Sec. 18.20.460. Provisions not applicable to nurses employed in federal or tribal facilities.

The provisions of AS 18.20.400 - 18.20.499 do

not apply to a nurse employed in a health care facility that is operated by

(1) the federal government; or

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

Sec. 18.20.470. Notice to employees. A health care facility shall post and maintain, in places readily accessible to individuals in the service of the health care facility, printed statements that describe employee rights and employer obligations under AS 18.20.400 - 18.20.499 and regulations adopted under AS 18.20.430. The commissioner shall supply the printed statements to a health care facility without cost to the facility.

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

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

(2) "health care facility" means a private, municipal, or state hospital; independent diagnostic testing facility; primary care outpatient facility; 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; private, municipal, or state facility employing one or more public health nurses; long-term care facility; psychiatric hospital; residential psychiatric treatment center, as defined in AS 18.07.111 or AS 47.32.900; secure residential psychiatric treatment center under AS 47.12.990; juvenile detention facility; juvenile detention home, juvenile work camp, or treatment facility as defined in AS 47.12.990;

(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;

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

(A) the unorganized borough; or

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

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

APPLICABILITY. A health care facility that is required to file reports under AS 18.20.450, enacted in sec. 2 of this Act, shall file its first report before February 1, 2011, for the period July 1, 2010, through December 31, 2010.

* Sec. 4. AS 18.20.450, enacted in sec. 2 of this Act, and sec. 3 of this Act take effect July 1, 2010.

* Sec. 5. Except as provided in sec. 4 of this Act, this Act takes effect January 1, 2011.

8 AAC 15.190. Nurse overtime investigations, conferences and persuasion

(a) The labor standards and safety division will investigate potential violations of AS 18.20.400 - 18.20.499 on its own motion, or on the complaint of any person.

(b) A complaint alleging a violation of AS 18.20.400 - 18.20.499 must be filed with the division within 30 days after the date of the alleged violation. The division shall provide a copy of the complaint to the health care facility named in the filing within three business days after receiving the complaint. Mailing to the health care facility's last known address or the address on file with the health facilities licensing and certification unit in the division of health care services, Department of Health and

Social Services, is valid service for the purposes of this section.

(c) If, after an investigation, the division finds that a health care facility has knowingly violated an overtime provision of AS 18.20.400 - 18.20.499, the division shall issue a decision containing the division's investigative findings and assessing the appropriate civil penalty under AS 18.20.430(c).

(d) A health care facility may request a hearing on the division's decision. A hearing request must be in writing and postmarked not later than 15 days of the division's decision. The request must identify the findings in dispute and the basis of the dispute. A hearing requested under this section shall be conducted in accordance with AS 44.64.010 - 44.64.200.