Health Law / Labor & Employment

Illinois Hospitals Now Prohibited From Requiring Mandated Nurse Overtime

By: Stephanie L. Dodge

On July 28, 2005, Governor Rod Blagojevich signed into law Senate Bill 201 which amends the Hospital Licensing Act to prohibit mandatory overtime for nurses. The law, which is effective immediately, prohibits licensed hospitals from requiring any hourly advanced practice nurse, registered professional nurse or licensed practical nurse to work in excess of an agreed-to, predetermined work shift, except in “unforeseen emergent circumstances.” The law also requires any nurse mandated to work up to 12 consecutive hours be allowed at least 8 consecutive hours off duty immediately following the completion of a shift.

The law protects professional nurses from discipline, discharge or any adverse employment action based upon the nurse’s refusal to work mandated overtime. In application, this new law raises many questions regarding appropriate scheduling of additional nursing hours and/or shifts. Below are answers to some of the most frequently asked questions regarding this new legislation.

1. Does this new law prohibit hospitals from requiring off-duty nurses from taking additional shifts?

No. As written, the legislation only prohibits a hospital from requiring nurses to work beyond the scheduled hours of a designated shift. It does not prohibit an employer from requiring off-duty nurses from reporting to work and/or accepting additional scheduled shifts (provided nurses have been allowed at least 8 consecutive hours off after working consecutive 12 hour shifts). Nor does it allow nurses to refuse reporting to work during hours they have previously been scheduled to work on-call.

2. Are exempt and/or non-patient care nurses protected from mandatory overtime?

No. This legislation applies only to non-exempt hourly nurses who also have direct responsibility to oversee or carry out nursing care. The prohibition against mandated overtime does not apply to exempt salaried employees. Nor does it apply to nurses employed in non-direct patient care positions or nurses who are otherwise not directly involved in providing nursing care. The law states that “advance practice nurse” does not include a certified registered nurse anesthetist who is primarily engaged in performing the duties of a nurse anesthetist.

3. What constitutes “unforeseen emergency circumstances” under the law?

The legislation defines “unforeseen emergency circumstances” as including either (i) any declared national, State or municipal disaster or other catastrophic event, or any implementation of the hospital’s disaster plan, that will substantially affect or increase the need for health care services; or (ii) any circumstance in which patient care needs require specialized nursing skills through completion of a procedure. The law specifically excludes as unforeseen emergent circumstances “situations in which the hospital fails to have enough nursing staff to meet the usual and reasonably predictable nursing needs of its patients.” Even in situations of such unforeseen emergency circumstance, the nurse may still only be required to work 4 hours beyond his/her predetermined shift.

In short, this means that a particular nurse may be required to work up to 4 hours beyond his/her scheduled shift to complete a specific procedure in which he/she is already involved (provided the procedure requires specialized nursing skills). The only other times nurses may be required to work beyond their scheduled shifts are in situations of
declared disaster, or when the hospital’s disaster plan has otherwise been implemented. For this reason, we recommend that hospitals review and potentially revise existing disaster plans to ensure maximum nurse staffing flexibility in emergent situations falling short of declared disasters, including situations involving unusual and/or unpredictable nurse staffing needs of patients.

4. How can a hospital best protect itself from claims arising under this statute?

The law provides that any violation must be proved by clear and convincing evidence that a nurse was required to work overtime against his or her will. A hospital can best avoid potential claims by requiring any nurse accepting voluntary overtime to sign a release or other attestation of voluntary shift extension. Another option would be to allow nurses contesting a particular assignment to complete a dispute form and/or report to a designated hospital representative.

5. In non-unforeseen emergent circumstances, may nurses be required to work beyond their regular shifts?

No. The 4-hour cap on extension of mandated overtime applies only to unforeseen emergent circumstances (as above described). Any non-voluntary extension of a scheduled shift in any non-emergent circumstance would constitute a violation of the Act.

6. Does the law provide any restriction on voluntary overtime?

No. The law places no restriction on employees voluntarily extending their scheduled shifts. We recommend, however, that hospitals provide appropriate training to front line managers and discourage any strong-handed tactics by managers and/or staff which might be construed as coercion or forced “voluntary” shift extensions. As discussed above, we also recommend nurses accepting voluntary overtime to sign specific releases.

7. Can a hospital require nurses to work overtime when there is an expectedly high level of call-ins?

Possibly. A hospital may be able to require mandated overtime if it can establish that it experienced a level of call-ins that exceeds the “usual and reasonably predictable” level of nurse absences the hospital normally experiences and the hospital’s disaster plan provides for mandated shift extension in such situations. For example, if the hospital typically has a 2% call-in rate and on a particular day 10% of the scheduled nurses call in, that may well constitute an “unforeseen emergent circumstance” that would permit the hospital to mandate overtime. However, this aspect of the law is vague and susceptible to differing interpretations.

8. How is this new law enforced? What are the remedies for violation of the law?

The Illinois Department of Public Health (IDPH) is the administrative agency responsible for enforcement of the Hospital Licensing Act, including the mandated overtime amendment. Any employee of a licensed Illinois hospital must file a complaint with the IDPH within 45 days following an alleged violation of the mandated overtime section. The IDPH must notify the respective hospital within 3 business days after the complaint is filed. Upon receiving a complaint of violation, the IDPH may take any action authorized under the Act, which may include hospital inspection and/or denial, suspension or revocation of a hospital’s license in cases of “substantial failure to comply with the provisions of the Act, or the standards, rules and regulations established by virtue thereof.” The Hospital Licensing Act does not provide a private right of action, nor is there any financial penalty associated with violation of the mandated overtime section.

9. Is IDPH likely to issue any interpretive rules or regulations regarding enforcement of the mandated overtime amendment?

The Director of Public Health has authority to prescribe rules and regulations to interpret any provision of the Illinois Hospital Licensing Act. However, we are unaware of any proposed regulatory initiative involving this new mandated overtime amendment to the Hospital Licensing Act.

If you have any questions regarding the foregoing, please contact Stephanie L. Dodge at (312) 569-1327 or at “sdodge@gcd.com.”