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MEMORANDUM

TO: RHCF Members

FROM: Ami Schnauber, Director of Government Relations
Elliott Frost, Senior Policy Analyst

DATE: July 10, 2009

SUBJECT: **Mandatory Nurse Overtime Prohibition Goes into Effect**

ABSTRACT: Legislation limiting mandatory nurse overtime went into effect July 1, 2009.

Introduction

[Legislation](#) (A.11711/S.8637, Gunther/Morahan) limiting the use of mandatory overtime for nurses became effective on July 1, 2009. The new law, Section 167 of the New York State Labor Law, generally prohibits health care providers from requiring registered nurses (RNs) and licensed practical nurses (LPNs) to work more than that nurse's regularly scheduled work hours.

We have recently received numerous questions from members looking for guidance in interpreting the new law. Following is our initial analysis of the legislation and information from the Department of Labor providing some answers to frequently asked questions.

Provisions of the Law

The law applies to health care employers including Public Health Law Article 28 facilities (i.e., nursing homes, hospitals, and diagnostic and treatment centers), facilities operated by the state or counties, and mental hygiene facilities. Home care agencies are not subject to the law. The prohibition on mandatory overtime applies only to RNs and LPNs "who provide direct patient care." The law provides that "no health care employer shall require a nurse to work more than that nurse's regularly scheduled work hours." "Regularly scheduled hours" is defined as "those hours a nurse has agreed to work and is normally scheduled to work."

There are a number of exceptions to the prohibition, but the law also provides protection to nurses who refuse to work overtime, stating that their refusal "shall not solely constitute patient abandonment or neglect." The exceptions to the prohibition include:

- A health care disaster in the county in which the nurse works or in a contiguous county. The disaster must also increase the need for health care personnel.
- A federal, state or county declaration of emergency in the county in which the nurse works or in a contiguous county.
- When a health care employer determines there is an emergency that could impact patient care. The legislation defines emergency as “an unanticipated staffing emergency...that could not be prudently planned for by an employer and does not regularly occur.” In such cases, the employer must make a good faith effort to have overtime covered voluntarily. The bill provides examples of “good faith efforts” to do so, which include calling per diems, seeking agency nurses, assigning floats, or requesting an additional day of work from off-duty employees.
- An ongoing medical or surgical procedure in which the nurse is actively engaged and whose continued presence is necessary to ensure patient safety.

Interpretation and Guidance

The New York State Department of Labor (DOL) is responsible for the enforcement of the new law and is currently developing emergency regulations that will stipulate the conditions under which health care facilities may require certain hourly employees to work overtime. However, DOL has provided answers to [frequently asked questions](#) (FAQ) on its Web site. You can access a copy of the FAQ by scrolling down to the bottom of the screen that displays this memo, and clicking on the attachment. Also, DOL has already developed a [complaint form](#) for nurses who believe they were mandated to work in violation of the law.

The FAQ should provide you with some initial insight into implementing the law, including:

- What is meant by overtime?
- What is meant by “prescheduled on-call time”?
- What steps must health care employers take to avoid using mandatory overtime?
- What is considered a “patient care emergency”?
- What is a “health care disaster”?
- What if my contract or collective bargaining agreement has additional protections against the use of mandatory overtime?

You can also contact DOL’s Division of Labor Standards at 518-485-0307 or via e-mail at nysdol@labor.state.ny.us with any questions.

Conclusion

NYAHSa is currently working with its General Counsel, Brian McGovern of Cadwalader, Wickersham & Taft LLP, to provide members with further guidance on the implementation of the law. We will also be reviewing the draft emergency regulations and alert you as soon as they are published in the *State Register*. NYAHSa will offer further guidance to members as it becomes available.

In the meantime, if you have any questions, please contact Elliot Frost at efrost@nyahsa.org or 518-449-2707 ext. 140.

Attachment