WEST VIRGINIA CODE CHAPTER 21 ARTICLE 5F

WV Legislature

§21-5F-1. Legislative findings and purpose.

The Legislature finds and declares that:

(1) It is essential that qualified registered nurses and other licensed health care workers providing direct patient care be

available to meet the needs of patients;

(2) Quality patient care is jeopardized by nurses that work unnecessarily long hours in hospitals;

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

(4) It is necessary to safeguard the efficiency, health and general well-being of health care workers in hospitals, as well as the health and general well-being of the persons who use their services;

(5) It is further necessary that health care workers be aware of their rights, duties and remedies with regard to hours worked

and patient safety; and

(6) Hospitals should provide adequate safe nursing staffing without the use of mandatory overtime.

WV Legislature

§21-5F-2. Definitions.

For the purposes of this article:

(1) "Hospital" means a facility licensed under the provisions of article five-b, chapter sixteen of this code, but does not include hospitals operated by state or federal agencies.

(2) "Nurse" means a certified or licensed practical nurse or a registered nurse who is providing nursing services and is involved in direct patient care activities or clinical services, but does not include certified nurse anesthetists. Nurse managers are included with respect to their delivery of in-hospital patient care, but this is in no way intended to impact on their 24-hour management responsibility for a unit, area or service.

(3) "Overtime" means the hours worked in excess of an agreed upon, predetermined, regularly scheduled shift.

(4) "Taking action against" means discharging; disciplining; threatening; reporting to the board of nursing; discriminating against; or penalizing regarding compensation, terms, conditions, location or privileges of employment.

(5) "Unforeseen emergent situation" means an unusual, unpredictable or unforeseen circumstance such as, but not limited to, an act of terrorism, a disease outbreak, adverse weather conditions or natural disasters. An unforeseen emergent situation does not include situations in which the hospital has reasonable knowledge of increased patient volume or decreased staffing, including, but not limited to, scheduled vacations and scheduled health care worker medical leave.

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§21-5F-3. Hospital nursing overtime limitations and requirements.

(a) Except as provided in subsections (b), (c), (d), (e) and (f) of this section, a hospital is prohibited from mandating a nurse, directly or through coercion, to accept an assignment of overtime and is prohibited from taking action against a nurse solely on the grounds that the nurse refuses to accept an assignment of overtime at the facility if the nurse declines to work additional hours because doing so may, in the nurse's judgment, jeopardize patient or employee safety.

(b) Notwithstanding subsections (a) and (g) of this section, a nurse may be scheduled for duty or mandated to continue on duty in overtime status in an unforeseen emergent situation that jeopardizes patient safety.

(c) Subsections (a) and (g) of this section do not apply when a nurse may be required to fulfill prescheduled on-call time, but nothing in this article shall be construed to permit an employer to use on-call time as a substitute for mandatory overtime.

(d) Notwithstanding subsections (a) and (g) of this section, a nurse may be required to work overtime to complete a single patient care procedure already in progress, but nothing in this article shall be construed to permit an employer to use a staffing pattern as a means to require a nurse to complete a procedure as a substitute for mandatory overtime.

(e) Subsection (a) of this section does not apply when a collective bargaining agreement is in place between nurses and the hospital which is intended to substitute for the provisions of this article by incorporating a procedure for the hospital to require overtime.

(f) Subsection (a) of this section does not apply to voluntary overtime.

(g) In the interest of patient safety, any nurse who works twelve or more consecutive hours, as permitted by this section, shall be allowed at least eight consecutive hours of off-duty time immediately following the completion of the shift. Except as provided in subsections (b), (c) and (d) of this section, no nurse shall work more than sixteen hours in a twenty-four hour period. The nurse is responsible for informing the employer hospital of other employment experience during the twenty-four hour period in question if this provision is to be invoked. To the extent that an on-call nurse has actually worked sixteen hours in a hospital, efforts shall be made by the hospital to find a replacement nurse to work.

Each hospital shall designate an anonymous process for patients and nurses to make staffing complaints related to patient safety.

(h) Each hospital shall post, in one or more conspicuous place or places where notices to employee nurses are customarily posted, a notice in a form approved by the commissioner setting forth a nurse's rights under this article.

WV Legislature

§21-5F-4. Enforcement; offenses and penalties.

(a) Pursuant to the powers set forth in article one of this chapter, the Commissioner of Labor is charged with the enforcement of this article. The commissioner shall propose legislative and procedural rules in accordance with the provisions of article three, chapter twenty-nine-a of this code to establish procedures for enforcement of this article. These rules shall include, but are not limited to, provisions to protect due process requirements, a hearings procedure, an appeals procedure, and a notification procedure, including any signs that must be posted by the facility.

(b) Any complaint must be filed with the commissioner regarding an alleged violation of the provisions of this article must be made within thirty days following the occurrence of the incident giving rise to the alleged violation. The commissioner shall keep each complaint anonymous until the commissioner finds that the complaint has merit. The commissioner shall establish a process for notifying a hospital of a complaint.

(c) The administrative penalty for the first violation of this article is a reprimand.

(d) The administrative penalty for the second offense of this article is a reprimand and a fine not to exceed $500.

(e) The administrative penalty for the third and subsequent offenses is a fine of not less than $2,500 and not more than $5,000 for each violation.

(f) To be eligible to be charged of a second offense or third offense under this section, the subsequent offense must occur within twelve months of the prior offense.

(g) All moneys paid as administrative penalties pursuant to this section shall be deposited into the General Revenue Fund.

WV Legislature

§21-5F-5. Relation to other laws.

Any law of this state currently enacted shall not be deemed to be amended, rescinded or otherwise affected by any provision of this article, but shall continue in full force and effect.

WV Legislature