

Health Policy Commission

Quality Improvement and Patient Protection
Committee

April 3, 2013



Agenda

- **Approval of the minutes from the 02/22/13 meeting**
- **Behavioral health integration in the MassHealth program (Dr. Julian Harris)**
- **Update on mental health parity regulations (Kevin Beagan)**
- **Mandatory nurse overtime discussion**
- **OPP transfer update**
- **Discussion of HPC implementation timeline for 2013**
- **Schedule of next Committee meeting**

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Section 103 of Chapter 224 (MGL 111, § 226)

- Section 103 of the recent Massachusetts health care reform law, Chapter 224 of the Acts of 2012, adds a new section 226 to Chapter 111 of the General Laws which governs the use of mandatory overtime for nurses in a hospital setting.
- Section 226 provides in pertinent part that:
 - (b) Notwithstanding any general or special law to the contrary, a hospital shall not require a nurse to work mandatory overtime except in the case of an emergency situation where the safety of the patient requires its use and when there is no reasonable alternative.
 - (c) Under section (b), whenever there is an ***emergency situation*** where the safety of a patient requires its use and when there is no **reasonable alternative**, the facility shall, before requiring mandatory overtime, make a **good faith effort** to have overtime covered on a voluntary basis. Mandatory overtime shall not be used as a practice for providing appropriate staffing for the level of patient care required.

Goals of Section 226

- Prohibit the use of mandatory overtime for nurses as a hospital staffing strategy
- Ensure that mandatory overtime is only used in exceptional circumstances, as a last resort
- Protect patient safety

Role of the Health Policy Commission

- Section 226 (d) specifies that the Health Policy Commission (“Commission”) established by section 2 of chapter 6D of the General Laws, **“shall develop guidelines and procedures to determine what constitutes an emergency situation for the purposes of allowing mandatory overtime.”**
- In developing the guidelines, the Commission is required to “consult with employees and employers who would be affected by such a policy” and also “to solicit comment from those same parties through a public hearing.”

Health Policy Commission Process

- QIPP Committee listening session on February 22, 2013
 - Approximately 200 people attended the session.
- The Committee received oral and written testimony from a number of interested parties, including representatives of
 - Labor unions representing nurses and other workers
 - Hospitals
 - Nurse leaders/executives
 - Community organizations
- Research and analysis
- Discussion of issues at QIPP Committee meeting on April 3, 2013
- Discussion of issues at Commission meeting on April 24, 2013
- Public hearing scheduled for April 26, 2013

Issues for Committee Discussion

- To fulfill its responsibility under section 226, the HPC seeks to develop guidance on the following terms:
 - 1) Emergency Situation**
 - 2) Reasonable Alternative**
 - 3) Good Faith Effort**

Definitions of “Emergency Situation” Proposed by Stakeholders

Massachusetts Nurses Association Proposal

Any **declared national, state or municipal disaster** or other **catastrophic event**, such as a natural disaster, act of terrorism or extended power outage that will **substantially alter the public’s health care requirements**.

Hospital and Nurse Leaders/Executives Proposal

Where **patient safety** requires the use of mandatory overtime and when there is **no other reasonable alternative**.

Definitions of “Emergency Situation” from Other State Statutes

- Sixteen other states have laws or regulations restricting mandatory overtime for nurses.
- Like Massachusetts, such states prohibit mandatory overtime for nurses except in certain circumstances.
- Terms describing exceptions to the prohibition of mandatory overtime defined in such statutes include
 - “Unforeseen emergency situation” (AL)
 - “Health care emergency” (CA)
 - “Public health emergency” and “institutional emergency” (CT)
 - “Unforeseen emergent circumstance” (ME)
 - “Unforeseeable emergent circumstance” (RI)

Example: Definitions from Other States

Pennsylvania 43 P.S. sec. 932

Definition of "Unforeseeable emergent circumstance":

1. An **unforeseeable declared national, State or municipal emergency**.
2. A **highly unusual or extraordinary event which is unpredictable or unavoidable** and which substantially affects the provision of needed health care services or increases the need for health care services. This paragraph includes:
 - an act of terrorism;
 - a natural disaster; and
 - a widespread disease outbreak.
3. **Unexpected absences, discovered at or before the commencement of a scheduled shift, which could not be prudently planned for** by an employer and which would significantly affect patient safety.

The term does not include vacancies that arise as a result of chronic short staffing.

Example: Definitions from Other States

New York Labor Law Section 167

Exceptions to limitations on mandatory nurse overtime do not apply in the case of:

1. a **health care disaster**, such as a natural or other type of disaster that increases the need for health care personnel, unexpectedly affecting the county in which the nurse is employed or in a contiguous county; or
2. a **federal, state or county declaration of emergency** in effect in the county in which the nurse is employed or in a contiguous county; or
3. where a **health care employer determines there is an emergency, necessary to provide safe patient care**, in which case the health care provider shall, before requiring an on-duty employee to remain, make a good faith effort to have overtime covered on a voluntary basis, including, but not limited to, calling per diems, agency nurses, assigning floats, or requesting an additional day of work from off-duty employees, to the extent such staffing options exist...
4. an **ongoing medical or surgical procedure** in which the nurse is actively engaged and whose continued presence through the completion of the procedure is needed to ensure the health and safety of the patient.

Example: Definitions from Other States

Texas Title 4 c. 258

Section 258.003 [prohibiting mandatory overtime for nurses] does not apply if:

- 1) a **health care disaster**, such as a natural or other type of disaster that increases the need for health care personnel, unexpectedly affects the county in which the nurse is employed or affects a contiguous county;
 - 2) a **federal, state, or county declaration of emergency** is in effect in the county in which the nurse is employed or is in effect in a contiguous county;
 - 3) there is an **emergency or unforeseen event** of a kind that: (A) does not regularly occur; (B) increases the need for health care personnel at the hospital to provide safe patient care; and (C) could not prudently be anticipated by the hospital; or
 - 4) the nurse is actively engaged in an **ongoing medical or surgical procedure** and the continued presence of the nurse through the completion of the procedure is necessary to ensure the health and safety of the patient.
- b) If a hospital determines that an exception exists under Subsection (a)(3), the hospital shall, to the extent possible, make a **good faith effort** to meet the staffing need through voluntary overtime, including calling per diems and agency nurses, assigning floats, or requesting an additional day of work from off-duty employees.

Collective Bargaining Agreements

Some current collective bargaining agreements provide guidance on:

- **“Reasonable alternatives”** to mandatory overtime:
 - Examples of procedures that can be instituted to avoid use of mandatory overtime include: float pools, advance scheduling practices, availability lists, etc.

- **“Good faith efforts** to have overtime covered on a voluntary basis:”
 - Examples of procedures that can be instituted to ensure that vacant shifts are covered or overtime is performed on a voluntary basis include: reaching out to other on-duty/off-duty nurses, on-call or per diem nurses, etc.

Example Definition of “Emergency Situation” for Committee Discussion

- An **emergency situation** for the purposes of allowing mandatory overtime means an unforeseen event that could not be prudently planned for or anticipated by a hospital and affects patient safety and where there is:
 - a **government declaration of an emergency**;
 - a **catastrophic event**; or
 - a **patient care emergency**.
- Mandatory overtime shall not be ordered in the case of a patient care emergency where there is a **reasonable alternative** to such overtime.
- Where an unexpected vacancy occurs despite a hospital’s implementation of a reasonable alternative, the hospital is required to exercise a **good faith effort** to fill the shift on a voluntary basis.

Example Definition of “Government Declaration of Emergency” for Committee Discussion

“**Government declaration of emergency**” means a federal, state, or local declaration of emergency that takes effect pursuant to applicable federal or state law in the county in which the nurses are employed or in a contiguous county.

Example Definition of “Catastrophic Event” for Committee Discussion

“**Catastrophic event**” means a catastrophic event that substantially alters the health care requirements in the county where nurses are employed or in a contiguous county, such as a natural disaster, an act of terrorism, or an extended power outage. A determination that a catastrophic event exists shall be made by a hospital’s chief executive officer or a specific designee and must be reasonable under the circumstances.

Examples of catastrophic events within the meaning of this definition include, but are not limited to, unforeseen events that substantially affect or increase the need for health care services, including events involving multiple serious injuries (e.g. fires, automobile accidents, a building collapse), chemical spill or release, widespread outbreak of disease or illness requiring emergency treatment or hospitalization for many in the hospital’s service area, or other serious event within the hospital, such as a riot or other disturbance which substantially affects or increases the need for health care services.

Example Definition of “Patient Care Emergency” for Committee Discussion

“Patient care emergency” means a situation that is unforeseen and could not be prudently planned for or anticipated by the hospital, and that requires the continued presence of a nurse to provide safe patient care. A determination that a patient care emergency exists shall be made by the hospital’s chief nursing officer or a specific designee.

A patient care emergency may include an ongoing medical or surgical procedure in which a nurse is actively engaged and where that particular nurse’s continued presence is needed to ensure the health and safety of the patient.

A patient care emergency shall not include a situation that is the result of routine staffing needs caused by typical staffing patterns, typical levels of absenteeism, or time off typically approved by the hospital for vacation, holidays, sick leave, and personal leave.

Example Definition of “Reasonable Alternative” for Committee Discussion

“Reasonable alternative” means the implementation of nurse staffing procedures prior to occurrence of an emergency situation, such as but not limited to: 1) maintaining a “float pool”; 2) creating and posting schedules with minimal staffing gaps at least four weeks in advance of scheduled shifts; 3) establishing an “availability list” or “on-call” list of nurses who may be available to volunteer for unexpected vacancies; 4) convening daily huddles to determine patient placement and staffing requirements, which may occur on every shift; and 5) ensuring the hospital’s “emergency operations plan” or “disaster plan” provides for staffing assignments during emergency situations.

Example Definition of “Good Faith Effort” for Committee Discussion

“**Good faith effort**” means the actions taken by a hospital to secure voluntary coverage of a vacant nursing shift during an emergency situation, such as but not limited to: 1) reaching out to all available qualified staff who are working at the time of the emergency situation; 2) contacting qualified employees who have made themselves available to work extra time; 3) seeking the use of off-duty, per diem, and part-time nurses; 4) seeking personnel from a contracted temporary agency when such staff is permitted by law or regulation; and 5) determining whether coverage is available from other units in the hospital.

Ongoing Monitoring of Implementation for Committee Discussion

- Section 226 requires hospitals to report all incidences of mandatory overtime under the laws to the Department of Public Health.
- To review and monitor the implementation of hospital compliance with these guidelines and procedures, the Commission shall review aggregate information provided by the Department about the incidence, prevalence, and circumstances surrounding orders of mandatory overtime for nurses by Massachusetts hospitals.
- The Commission will review each annual report to determine whether changes should be made to the guidelines and procedures for mandatory overtime in accordance with the purposes of law.

Discussion Questions

- What issues should the Committee consider in addressing emergency situations that are
 - **external** to the hospital, including government declared emergencies and catastrophic events?
 - **internal** to the hospital, including catastrophic events and when the continued presence of nurse is needed for ongoing patient care?
- What issues should the Committee consider in addressing “reasonable alternatives” and “good faith efforts,” including efforts to
 - ensure that mandatory overtime shall not be used as a practice for providing appropriate staffing for the level of patient care required?
 - provide that overtime is covered on a voluntary basis?

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QIPP 2013 Implementation Timeline

First Quarter (January – March)

- Hold a stakeholder listening session relative to the definition of “emergency situation” for the purposes of allowing mandatory overtime
- Promulgate regulations and work with the Department of Public Health to ensure the seamless transfer of the Office of Patient Protection to the HPC

Second Quarter (April – June)

- Finalize the transfer the Office of Patient Protection
- Hold a public hearing on mandatory nurse overtime and finalize the Commission’s guidelines and procedures
- Begin joint listening sessions and deliberations with the CDPSR Committee on the development of new care delivery models
- Monitor the development and implementation of mental health parity regulations as required by c. 224

Third Quarter (July – September)

- Establish a system for collecting data on external reviews and analyzing trends in patient access to care through the Office of Patient Protection
- Review and deliberate on the recommendations of the Behavioral Health Task Force established in c. 224 (Report due July 1, 2013)
- Collaborate with the CDPSR Committee on proposed regulations on a certification program for ACOs and Patient-Centered Medical Homes

Fourth Quarter (October – December)

- Relaunch the Office of Patient Protection
- Develop internal and external review processes for the review of grievances submitted by patients of risk-bearing provider organizations and ACOs
- Finalize regulations on a certification program for ACOs and Patient-Centered Medical Homes
- Review information provided DPH about the incidence, prevalence, and circumstances surrounding orders of mandatory overtime for nurses

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Contact information

For more information about the Health Policy Commission:

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