

HEALTH POLICY COMMISSION



GUIDELINES ON MANDATORY OVERTIME FOR NURSES IN A HOSPITAL SETTING

Introduction

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 that governs the use of mandatory overtime for nurses in a hospital setting. The goals of Section 226 are to:

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

Under the law, the Health Policy Commission (“Commission”) is required to “develop guidelines and procedures to determine what constitutes an emergency situation for the purposes of allowing mandatory overtime.” To fulfill its responsibilities under section 226, the Commission’s Quality Improvement and Patient Protection Committee (“Committee”) provided a number of opportunities for input from the employees and employers who would be affected by such a policy. The Committee held a listening session at its meeting on February 22, 2013 and a public hearing on April 26, 2013. Representatives from hospitals, labor unions representing nurses and other health care workers, community organizations, nurse leaders/executives, and members of the public submitted oral and written testimony about the Commission’s responsibility under Section 226.

Members of the Committee appreciated the perspectives offered by all who provided testimony and constructive input throughout this process. The Committee was pleased to hear a consensus emerge across all stakeholders that mandatory overtime should not be used as an alternative to appropriate staffing practices and should be used only in extraordinary circumstances.

To develop the Guidelines presented for Commission approval on June 19, 2013, the Committee reviewed stakeholder testimony and also worked with Commission staff to conduct an in-depth review of statutes and regulations from other states that have successfully implemented restrictions on the use of mandatory nurse overtime. The Committee also reviewed language pertaining to mandatory nurse overtime found in current collective bargaining agreements for a number of Massachusetts hospitals. Following the public hearing on April 26, 2013, the Committee discussed its recommend Guidelines at a meeting on June 10, 2013. The Guidelines were adopted by the Commission at its meeting on June 19, 2013.

Guidelines

Guidelines for Determining What Constitutes an Emergency Situation for Purposes of Allowing Overtime Pursuant to M.G.L. c. 111, section 226

An emergency situation for the purposes of allowing mandatory overtime under Section 226 means an unforeseen event that could not be prudently planned for or anticipated by a hospital and affects patient safety in the hospital and where there is a

- a) government declaration of emergency;**
- b) catastrophic event; or**
- c) hospital emergency.**

Mandatory overtime shall not be ordered in the case of an emergency situation 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.

A determination that an emergency situation that affects patient safety in the hospital exists shall be made by a hospital's chief executive officer or a specific senior management designee and must be reasonable under the circumstances.

A **government declaration of emergency** is a federal, state, municipal, or local declaration of emergency that takes effect pursuant to applicable federal or state law.

A **catastrophic event** is an unforeseen event that substantially affects or increases the need for health care services, such as a natural disaster, an act of terrorism, or an extended power outage. Examples of catastrophic events include, but are not limited to, events involving numerous serious injuries (e.g. fires, multiple automobile accidents, a building collapse), a chemical spill or release, widespread outbreak of disease or illness requiring emergency treatment or hospitalization for many in the hospital's service area.

A **hospital emergency** is a situation internal to the hospital that is unforeseen and could not be prudently planned for or anticipated by the hospital, and that substantially affects the delivery of medical care or increases the need for health care services. Examples of hospital emergencies include, but are not limited to, a riot or other disturbance within the hospital, an extended power outage, system failure or other unexpected occurrence that impacts care delivery or compromises patient safety. A hospital emergency may include an ongoing medical or surgical procedure in which a nurse is actively engaged and where that particular nurse's continued presence beyond the end of a scheduled shift was unforeseen and necessary to ensure the health and safety of the patient. A hospital emergency shall not include a situation that is the result of routine staffing needs caused by typical staffing patterns, expected levels of absenteeism, or time off typically approved by the hospital for vacation, holidays, sick leave, and personal leave.

Examples of reasonable alternatives to mandatory overtime that may be implemented by a hospital prior to an emergency situation include: 1) maintaining a “float pool”; 2) creating and posting any work schedules with minimal staffing gaps at least four weeks in advance of scheduled shifts for the purpose of filling any vacant shifts; 3) taking action to fill any remaining vacancies before such shifts occur; 4) establishing an “availability list” or “on-call” list of nurses who may be available to volunteer for unexpected vacancies; 5) convening daily pre-shift huddles to determine patient placement and staffing requirements; and 6) ensuring the hospital’s “emergency operations plan” or “disaster plan” provides for staffing assignments during an emergency situation.

Examples of good faith efforts that may be taken by a hospital to secure voluntary coverage of a vacant nursing shift during an emergency situation include: 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; 5) determining whether coverage is available from other units in the hospital.

Monitoring of Implementation

To review and monitor the implementation of and hospital compliance with these guidelines and procedures, the Commission shall review reports submitted to the Department of Public Health pursuant to M.G.L. c. 111, section 226 about the instances of overtime for nurses mandated by Massachusetts hospitals and shall determine whether changes should be made to the guidelines in accordance with the purposes of the law.