**Proposed Guidelines on Mandatory Nurse Overtime**

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 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”) held a listening session at its meeting on February 22, 2013. Representatives from hospitals, labor unions representing nurses and other health care workers, community organizations, nurse leaders/executives, and members of the public delivered oral and written testimony about the Commission’s responsibility under Section 226.

Members of the Committee appreciated the perspectives offered by all who testified, particularly those employers and employees who would be affected by these proposed guidelines and procedures. 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 limited circumstances.

To develop this draft, Commission staff relied on stakeholder testimony as well as an in-depth review of language pertaining to mandatory overtime in collective bargaining agreements and statutory language from other states that have successfully implemented restrictions on the use of mandatory nurse overtime. Following the public hearing on April 26, 2013, the Committee will hold another meeting and the Committee Chair will present final guidelines for approval at the Commission meeting scheduled on June 19, 2013.

Proposed 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) patient care 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 **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. 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 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, or other serious event within the hospital, such as a riot or other disturbance that substantially affects or increases the need for health care services.

A **patient care emergency** is 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 executive 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.

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 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.