Mandatory Overtime – A Health Care Crisis

The American Hospital Association admits that a major cause of the nursing shortage is high employee dissatisfaction.

EXECUTIVE SUMMARY

The fact that New York state has a severe nursing shortage is well known. What is not well–known is the role that poor working conditions play in causing that shortage. The American Hospital Association admits that a major cause of the nursing shortage is high employee dissatisfaction. Surveys have shown that the exodus of registered nurses is caused by difficult working conditions, including mandatory overtime. Almost 30 percent, or 69,000 of the 237,000 registered nurses licensed in New York are **choosing** not to practice in large part because of mandatory overtime. If this trend continues, recruiting and retaining nurses will become even more difficult — this cycle must be broken.

The major unions representing nurses in New York state favor the passage of S.6342 (Morahan)/A.1898-B (Gunther) which prohibits mandatory overtime for nurses in most cases, with exceptions for emergencies. This legislative proposal does not prohibit a nurse from volunteering to work overtime, which is a more appropriate and safe way to fill short-term staffing needs. **It is similar to legislation or regulations already enacted in several states, including effective in 2008, New Hampshire and Rhode Island.** In total, there are currently fourteen states with such legislation or regulations – California, Connecticut, Illinois, Maine, Maryland, Minnesota, Missouri, New Hampshire, New Jersey, Oregon, Rhode Island, Texas, Washington, and West Virginia. Limiting mandatory overtime in New York state would force employers to properly staff health institutions and would address the most common factors, which were found by the General Accounting Office and the Survey of PEF Nurses, that hurt nurse recruitment and retention.

The fact that New York's neighboring states have successfully implemented limits on mandatory overtime undermines opponents' main argument that restricting mandatory overtime will threaten patient safety and undermine the finances of New York's hospitals. **The evidence proves that the failure to restrict mandatory overtime in New York will do more harm to patient safety and hospital finances.**

The use of overtime and mandatory overtime in New York hospitals is increasing. National studies and data concerning New York state agency nursing vacancies and overtime indicate that hospitals are using mandatory overtime as a staffing tool rather than as a last resort in response to the nursing shortage.

There is a correlation between the increase in direct care nursing vacancies in state facilities and an increase in the use of overtime and mandatory overtime.

- **Between 1995 and 2002 in New York state private and public hospitals, overtime increased 51 percent, from 3.9 percent of total hours to 5.9 percent.**

- **Since April 1, 2003, 3.8 million hours of overtime has been worked by nurses employed by New York state. However, during SFY 2007 – 08 the number of overtime hours, when compared to the previous years, has decreased. This decrease in the use of overtime hours mirrors the SFY 2004 to SFY 2005 decrease, which was followed by an even larger increase in SFY 2006. At this point, it is difficult to determine,whether the SFY 2007 overtime decrease will be maintained or if it is a one-year variation. This paper will continue to rely largely on the previous SFY(s) data and established trends (see Table 3).**

- **Nurses employed by the state have worked an estimated 1.86 million hours of mandatory overtime from April 1, 2003 through March 31, 2008 costing New York state $66.03 million.**

- **From SFY 2005 to SFY 2006, the overtime hours of direct care nurses employed by New York state agencies, increased by 28 percent. Half of the agencies' overtime hours increased, during this short span of time, by 15 percent or more (see Table 2a).**

- **From March 2000 to March 2008 the number of direct care nursing vacancies in the state agencies has increased by 24 percent; *when the SUNY nurses are excluded nursing vacancies have increased by 50 percent.*** **The most recent vacancy data increased only slightly from the March 2007 rate. For the purpose of comparing the overtime data with the vacancy data, the 2007 data will be used. There is a correlation between the increase in direct care nursing vacancies in state facilities and an increase in the use of overtime and mandatory overtime. Between March 2003 and March 2007 the use of overtime/mandatory overtime at state facilities (excluding SUNY) increased by 19 percent and during the same time period vacancies, for those agencies, increased by 17 percent** (see Tables 6 and 7).

- **In New York state public and private hospitals the job vacancy rate for nurses, according to a recent study by the Healthcare Association of New York State, increased from 6.38 percent in 2006 to 8.8 percent in 2007. (This is higher than the national average of 8.5 percent.)**

New York state accounts for 6,600 of fatal medical errors, which places medical errors among the leading causes of death.

Mandatory overtime has a negative impact on patient care and causes unnecessary deaths.

- Based on a report by the Institute of Medicine (IOM), New York state accounts for 6,600 of fatal medical errors, which places medical errors among the leading causes of death. **The elimination of mandated overtime would conservatively save 330 lives in New York annually** (based on the conservative assumption that five percent of medical errors are connected to nurses working mandatory overtime).

- A University of Pennsylvania study found that nurses working more than 12 hours were **three times** more likely to make medical errors. The risks of making an error increase when: work shifts are greater than twelve hours; nurses worked more than forty hours per week; and when nurses work overtime.

Mandatory overtime results in hidden costs to hospitals.

Studies have documented that mandatory overtime causes high turnover, the need to refill vacancies, and medical errors – all of which have hidden costs. For example:

- Patient costs at high turnover hospitals were almost $2,000 more per discharge than at lower-turnover hospitals.

- Based on a 20 percent turnover rate, a hospital with 600 nurses will spend $6.9 million a year in replacement costs in addition to the nurses' salaries ($57,784 spent per RN, per year).

- New York hospitals would save approximately $98 million in annual costs related to complications or additional necessary care due to preventable medical errors, including medication errors, caused by mandatory overtime.

Mandatory overtime has a negative impact on nurses' health and safety.

- Nursing is one of the ten occupations with the highest levels of occupational injury or illness requiring days away from work. According to a study by Macias et al, the risk of one of the most common nursing occupational injuries, needle sticks and incidents of biological fluid exposure significantly increase in the last two hours of twelve hour shifts. No increase in these incidents was found in the last two hours of an eight hour shift.

Surveys have shown that an exodus of registered nurses is caused by difficult working conditions, including mandatory overtime.

- Studies have shown that nurses working twelve or more hours per shift and more than 40 hours per week are at increased risk for musculoskeletal disorders (MSD) such as back, neck, or shoulder injury. Nurses working nights or weekends also significantly increased their risk of MSD injuries, due in part to lower staffing levels on those shifts.

SECTION ONE

HOW MANDATORY OVERTIME HURTS NEW YORK'S PATIENTS, NURSES, AND HEALTH CARE SYSTEM

OVERVIEW

The current prognosis for the nursing profession is poor. Stories about the shortage of nurses are widespread. There are two causes for this shortage — one is the declining number of new nurses, the other is that thousands of nurses leave the profession. Surveys have shown that an exodus of registered nurses is caused by difficult working conditions, including mandatory overtime. As this trend continues, recruiting and retaining nurses becomes more and more difficult — a cycle that must be broken.

The work of professional nurses is stressful and demanding, even under the best of circumstances. In recent years, nurses from all over the state have faced the added burden of the increased use of mandatory overtime. Nurses are required to work long overtime hours, often including double shifts. Making the work of nurses increasingly onerous will not solve the workforce shortage.

Table 1 summarizes the leading factors found by the American Hospital Association to be contributing to the nursing shortage. Note that even the hospital industry admits that a major cause of the nursing shortage is the high level of employee dissatisfaction; mandatory overtime is a top contributor to that dissatisfaction.

Table 1
Leading Factors Contributing to the Nursing Workforce Shortage

1. Workforce is aging
2. Fewer potential workers following retiring baby boom generation
3. Fewer choosing health care careers
4. Employee dissatisfaction is high

Source: AHA Commission on Workforce for Hospitals and Health Systems, In Our Hands: How Hospital Leaders Can Build a Thriving Workforce , The Workforce Strategy Map

* A variety of reports from these forums indicated some type of suggestion related to limiting or restricting the use of mandatory overtime. Reports and forums including: New York State Education Department (SED) "2002 Registered Nurses Survey" Research Report, Submitted in 2003; The New York State Assembly Nursing Shortage Task Force, Resolving New York's Nursing Shortage – Recommendations for Addressing the Nursing Shortage for New York," Submitted in 2001; New York State Senate Higher Education Subcommittee on Nursing Shortages, Final Report, Submitted March 2005.

Unless mandated overtime is addressed, more nurses will chose to leave the profession, which will aggravate other efforts to increase the number of nurses. PEF and every major union in New York state that represents nurses believe that the cure for the vicious mandatory overtime/nursing shortage cycle is limiting mandatory overtime (MOT).

Unions are not alone in sharing this belief. New York state legislators have reported back from "nursing shortage" task forces, round tables, and hearings with similar suggestions. One recommendation that continues to emerge from these forums is that New York state should restrict mandatory overtime to true emergencies.

Of the 237,000 registered nurses licensed in New York almost 30 percent are choosing not to practice.

MANDATORY OVERTIME AGGRAVATES THE CURRENT NURSING SHORTAGE

New York state, along with the rest of the nation, is facing a severe nursing shortage with respect to practicing nurses. A report commissioned by the American Federation of State, County, and Municipal Employees, AFL-CIO (AFSCME) found no genuine shortage of nurses, but rather a shortage of nurses ***willing*** to work under the conditions currently offered by the hospital industry. **Of the 237,000 registered nurses licensed in New York almost 30 percent are *choosing* not to practice. This means there are 69,000 nurses in New York state who maintain their active licenses, but choose not to work as a nurse.**

In order for New York state to solve its nursing shortage, legislators and employers must address the issues that cause licensed nurses to leave the profession. While there are multiple and sometimes overlapping factors contributing to the nursing shortage, one primary source of nurses' job dissatisfaction is the use of mandatory overtime. The New York State Education Department's *2002 Registered Nurse Survey Research Report* (NYSED Report) found the following factors, among others, as reason(s) that nurses contemplate leaving their current job or the profession altogether.

- Nurses within inpatient hospital settings expressed the intention to leave their current job, not the nursing profession, within the next five years with greater frequency than nurses working in ***all*** other settings.

- Thirty-four percent of the nurses who reported that all of their overtime work is mandatory and twenty-five percent of the nurses who reported that some of their overtime is mandatory also reported a high level of job search behavior (percentages are based on participants in the NYSED 2002 Survey).
- Stress was the most frequently cited reason for leaving the profession (58 percent of RNs cited it as the primary reason to leave). Other reasons RNs cited for intending to leave

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> **the profession within the next year, included retirement (49 percent); salary (43 percent); recognition (33 percent); shift/hours (24 percent); and career change (24 percent).**

The NYSED report found a clear connection between mandatory overtime and the level of nurse job dissatisfaction. The report states that "our survey respondents whose overtime work is always done on a mandatory basis are among the most dissatisfied nurses in New York state, and have an especially low level of organizational commitment." The report goes further to note that those nurses are the same who are "significantly less likely to recommend nursing as a career to a friend." In addition, several national reports have made connections similar to those found in the NYSED report. In recognition of these reports many states have taken, or are in the process of taking steps to address the mandatory overtime issue.

In a recent survey of direct care nurses working for the state of New York, 60 percent indicated that they would delay leaving the nursing professions if working conditions improved. In addition to mandated overtime 44 percent of the nurses cited that they often arrive early or stay past the end of their shift to complete work assignments without compensation. Furthermore, 68 percent often work through their breaks or meals periods to complete assigned workloads. [1]

Repeatedly mandating overtime is symptomatic of recruitment and retention problems in the nursing profession and is avoidable. According to the General Accounting Office (GAO), five major factors negatively affect the recruitment and retention of nurses. These include conditions such as:

- **inadequate staffing,**
- **heavy workloads,**
- **increased use of overtime,**
- **lack of sufficient support staff, and**
- **inadequate wages.**[2]

Limiting mandatory overtime would force employers to properly staff to avoid overtime and would address three of the five factors cited by GAO as negatively affecting the recruitment and retention of nurses. **The five factors noted in the GAO report were also identified by PEF represented nurses as the biggest problems facing direct care nurses in NYS facilities.**[3]

The description given by one nurse of her experience in hospital nursing provides a clear picture of the mandatory overtime/nursing shortage cycle. This heart-felt description of one nurse's experience was included in the NYSED Report:

> **"I would have stayed in hospital nursing because of my love for nursing; however, with the way nursing care is today, I had to run for my sanity and health due to stress. Nurses are**

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> **mandated daily to work 16-hour days and return the next day for more of the same.** Nurses are shown no respect for their knowledge or dedication to patient care by other departments or administration. More and more responsibilities are added to the nurses' daily workload to compensate for cutbacks in all departments. I do not understand how other departments or administrators fail to realize that without nurses a hospital cannot survive." (NYSED Research Report, *Registered Nurses in New York State, 2002 – Volume II*, October 2003)

According to the NYSED report, approximately 59 percent of active New York RNs who work overtime reported that their overtime is either sometimes or always mandatory.[4] This figure is confirmed by the results of the *PEF Nursing Survey of Direct Care Staff* where 58 percent of the nurses reported that they had been mandated to work overtime. That means approximately 59 percent of New York state nurses have already entered the vicious mandatory overtime/nursing shortage cycle and may soon leave the profession, dangerously exacerbating the current nursing shortage.

OVERTIME & MANDATORY OVERTIME IN NEW YORK STATE IS PREVALENT, EXPENSIVE, AND NOT A STAFFING TOOL OF LAST RESORT

Overtime is not being used by New York's hospitals as a last resort, but instead it is increasingly becoming part of hospital administrators' "staff-planning tool kit." Many facilities providing nursing care in New York state routinely require mandatory overtime as a means to alleviate short staffing. According to the Department for Professional Employees AFL-CIO, "Many hospitals are routinely requiring nurses to work unplanned or mandatory overtime and to 'float' to departments *outside their expertise*," due to the nursing shortage.[5] **In all New York state hospitals, between 1995 and 2002, overtime increased 51 percent, from 3.9 percent of the total hours worked to 5.9 percent of the total hours worked.[6]**

The most recent data from the Office of the New York State Comptroller shows that overtime in health care facilities operated by New York state remains extensive, with 3.8 million hours of overtime reported since April 1, 2003. However, during the SFY 2007 -08 the number of overtime hours, when compared to the previous years, has decreased. This decrease in the use of overtime hours mirrors the decrease that occurred from SFY 2004 to SFY 2005. It is important to note that the SFY 2004 to SFY 2005 decrease was followed by an even larger increase in the use of overtime hours in SFY 2006.

While PEF is encouraged by any indication that the New York state health care facilities may be decreasing their use of overtime, it is difficult

to know whether the SFY 2007 data is a one year variation from the previous data or an indication of a future trend. Additionally, if the proposed hiring freeze is implemented, the number of overtime hours may once again increase. PEF will continue to monitor the apparent decrease in the use of overtime hours, but due to the concerns expressed above; this paper will continue to rely largely on the previous SFY(s) data and established trends.

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As of SFY 2006, the overtime hours worked, overall, by these nurses increased by 16 percent since 2003. During the same time frame, nurses in the New York State Office of Mental Health (OMH) worked on average 325,790 overtime hours annually. If the SFY 2007 overtime hours are included, the average hours of overtime worked annually slightly decreases to 322,348, but it still makes OMH the state agency with the most prevalent use of nursing overtime. A complete view of New York state's nurses' overtime hours, by agency, for the top five agencies utilizing overtime, from SFY 2003 – 2007, can be found in the chart below.

Table 2:
New York State Nurse Overtime Hours --
Top 5 Agencies Using OT
SFY 2003 - 2007

	2003	2004	2005	2006	2007	Average of OT Hours 2003 - 2006	Average of OT Hours 2003 - 2007
DOCS	192,926	230,642	179,775	238,328	132,548	210,418	194,844
DOH	24,819	26,752	25,960	25,785	25,117	25,829	25,687
SUNY	158,710	190,824	161,241	161,661	152,543	168,109	164,996
OMH	317,601	342,489	260,858	382,213	308,580	325,790	322,348
OMRDD	45,789	42,592	38,369	44,315	32,446	42,766	40,702

SOURCE: Based on data from OSC.

When comparing SFY 2005 to SFY 2006, the overtime hours of direct care nurses employed by New York state agencies, increased by 28 percent. Half of the agencies' overtime hours increased, during this short span of time, by 15 percent or more. An overview of the change in overtime hours from SFY 2005 to SFY 2006 can be found in Table 2a.

Since April 1, 2003, New York has paid more than $134.7 million in overtime costs for nurses in all state agencies (includes SFY 2007). When examining the trend that occurred from SFY 2003 to SFY 2006, it is apparent that overtime decreased in a few agencies, but that most of the agencies increased their use of overtime. Despite reducing its overtime use since SFY 2003, the Office of Mental Retardation and Developmental Disabilities (OMRDD) is still among the top five agencies that spend the most and use the most overtime hours. Since April 1, 2003, OMRDD has spent more than $6.8 million for nursing overtime.

The amount of money spent by OMRDD does not compare to the amount of money spent by the Office of Mental Health (OMH) or the

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Table 2a : New York State Nurse Overtime Hours (by agency) Change & Percent Change from SFY 2005 to SFY 2006

Agency	Overtime Hours	
	Change	% Change
DOCS	58,553	33%
SED	-489	-63%
DOH	-175	-1%
OCFS	551	24%
SUNY	420	0.26%
OMH	121,355	47%
OMRDD	5,947	15%
OASAS	518	6%
Total by Year	186,679	28%

From SFY 2005 to SFY 2006 the overtime hours worked by direct care nurses in NYS increased by 186,679 hours, which is a 28 percent increase.

Department of Correctional Services (DOCS) for overtime hours. OMH and DOCS combined have spent, almost $63 million on overtime hours during the SFY 2003 – 2006 time period; and another $20.9 million in SFY 2007.

- OMH spent $15 million on overtime worked by state direct care nurses in SFY 2007 and $60.5 million since April 1, 2003.
- DOCS spent approximately $5.9 million on overtime for its state direct care nurses in SFY 2007 and $23.4 million since April 2003.

Table 3 shows the dollars expended by each state agency on nurses' overtime from April 1, 2003 – March 31, 2008.

While overtime can be easily tracked, mandatory overtime has ***always*** been measured by anecdote and survey. The state does not require that mandatory overtime statistics be reported. A NYSED report released in 2003 found that 16 percent of RNs reported their overtime is ***always*** mandatory, 43 percent reported that overtime is sometimes mandatory, and 41 percent indicated that it's never mandatory (See graph on next page).

A 2001 American Federation of Teachers study indicated that the nurses who reported working overtime said nearly half (49 percent) of the overtime hours were mandatory.* This figure is similar to the number of New York state nurses, as indicated by the NYSED report, that claim their overtime hours are either sometimes or always mandated. Using

Table 3: New York State Nurse Overtime Hours & Dollars Expended on Overtime (by agency)
SFY 2003 - 2007

	SFY 2003		SFY 2004		SFY 2005		SFY 2006		SFY 2007		SFY 2003 - 2006 Percent Difference		SFY 2003 - Diffe
Agency	OT hours	Expended in OT	OT hours	Expended in OT	OT hours	Expended in OT	OT hours	Expended in OT	OT hours	Expended in OT	OT hours	OT dollars	OT hours
DOCS	192,926	$3,813,186	230,642	$4,561,842	179,775	$3,581,339	238,328	$5,542,816	132,548	$5,904,039	24%	45%	-31%
SED	518	$15,483	797	$21,679	778	$25,730	289	$9,163	143	$5,108	-44%	-41%	-72%
DOH	24,819	$983,375	26,752	$1,074,625	25,960	$1,162,855	25,785	$1,175,892	25,117	$1,217,253	4%	20%	1%
OCFS	2,469	$72,710	2,353	$65,099	2,278	$73,262	2,829	$95,337	2,110	$85,558	15%	31%	-15%
SUNY	158,710	$5,907,121	190,824	$7,082,771	161,241	$7,403,018	161,661	$7,597,431	152,543	$8,242,896	2%	29%	-4%
OMH	317,601	$9,713,154	342,489	$11,379,128	260,858	$9,415,171	382,213	$14,932,101	308,580	$15,018,114	20%	54%	-3%
OMRDD	45,789	$1,430,797	42,592	$1,312,541	38,369	$1,165,219	44,315	$1,449,096	32,446	$1,461,978	-3%	1%	-29%
OASAS	5,681	$223,913	6,267	$265,029	8,880	$414,408	9,398	$442,570	8,247	$389,703	65%	98%	45%
Total by Year	748,512	$22,159,740	842,715	$25,762,713	678,139	$23,241,002	864,818	$31,244,406	661,734	$32,324,648	16%	41%	-12%
(without SUNY)	589,802	$16,252,619	651,891	$18,679,942	516,898	$15,837,984	703,157	$23,646,975	509,191	$24,081,752	19%	45%	-14%

Total OT hrs since 2003: 3,795,918 — Total OT $'ers spent since 2003: $134,732,509

*Total OT hrs since 2003 without SUNY data: 2,970,940 — *Total OT $'ers spent since 2003 without SUNY data: $98,499,272

Since 2003 more than $134.7 million has been spent on overtime hours.

Notes:

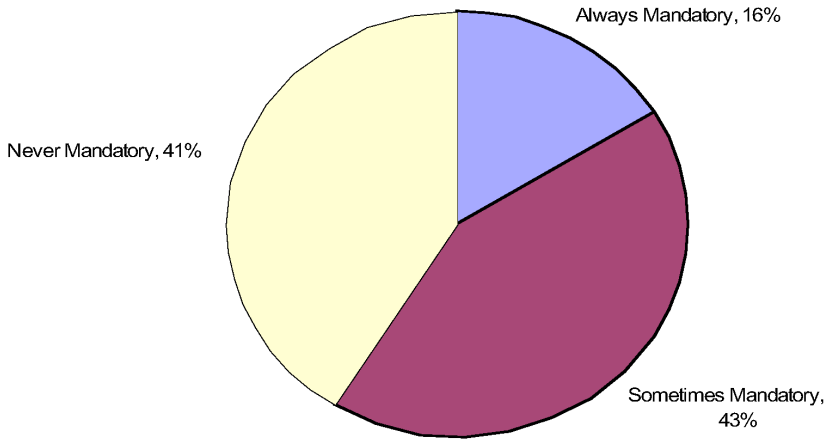
* Figures exclude SUNY OT data.

Two agencies, OSC and DCS, were removed due to the negligible amount of overtime actually utilized. The actual OT hours for both agencies were as follows: **2003 -** OSC 6 hrs, DCS 178 hrs; **2004 -** OSC 6 hrs, DCS 285 hrs; **2005 -** OSC 7 hrs, DC **2006 -** OSC 0 hrs reported, DCS 381 hrs; **2007 -** OSC 4.5 hrs, DCS 161.25 hrs.

Codes included with each agency's calculation for the above sums of OT: Office of the State Comptroller (OSC): 02000; Department of Civil Service (DCS): 08000; Department of Correctional Services (DOCS): 10000 - 10680; State Education Depar 11260 - 11270; Department of Health (DOH): 12000 - 12200; Office of Children and Family Services (OCFS): 25000; State University of New York (SUNY): 28010 - 28670; Office of Mental Health (OMH): 50010 - 50980; Office of Mental Retardation a Developmental Disabilities (OMRDD): 51000 - 51940; Office of Alcoholism and Substance Abuse Services (OASAS): 53500.

the data reported by New York state agencies, (assuming that 49 percent of the overtime hours were mandatory), direct care nurses working for the state, have worked more than 1.86 million hours of mandatory overtime from April 1, 2003 through March 31, 2008, costing New York state over $66 million (see Table 5).

Table 4: Mandatory Overtime in Primary Nursing Job
(RNs Working in New York State who Report Working Overtime)



Source: NYSED Research Report, Registered Nurses in New York State, 2002 - September 2003

The table below provides a break down of the estimated overtime hours mandated, by state agency, and the estimated amount of money spent on mandatory overtime each year.

The large number of hours of mandatory overtime worked by state employee nurses since April 1, 2003, and the fact that these mandated

Table 5: New York State Nurses -- Estimated Mandatory Overtime Hours & Dollars (by agency)
SFY 2003 - 2007

	SFY 2003		SFY 2004		SFY 2005		SFY 2006		SFY 2007		SFY 2003 - 2006 Percent Difference		SFY 2003 - Diff
Code	MOT Hrs	MOT $'ers	MOT Hrs	MOT $'ers	MOT Hrs	MOT $'ers	MOT Hrs	MOT $'ers	MOT Hrs	MOT $'ers	MOT Hrs	MOT $'ers	MOT Hrs
DOCS	94,534	$2,799,145	113,014	$3,455,979	88,090	$3,018,842	116,781	$4,219,288	64,948	$3,172,724	24%	51%	-31%
SED	254	$7,512	391	$11,942	381	$13,069	142	$5,121	70	$3,429	-44%	-32%	-72%
DOH	12,161	$360,097	13,108	$400,853	12,720	$435,931	12,635	$456,494	12,307	$601,211	4%	27%	1%
OCFS	1,210	$35,815	1,153	$35,262	1,116	$38,249	1,386	$50,079	1,034	$50,506	15%	40%	-15%
SUNY	77,768	$2,302,701	93,504	$2,859,342	79,008	$2,707,607	79,214	$2,861,998	74,746	$3,651,345	2%	24%	-4%
OMH	155,625	$4,608,048	167,819	$5,131,919	127,821	$4,380,413	187,284	$6,766,585	151,204	$7,386,334	20%	47%	-3%
OMRDD	22,437	$664,349	20,870	$638,204	18,801	$644,303	21,715	$784,548	15,898	$776,635	-3%	18%	-29%
OASAS	2,783	$82,418	3,071	$93,902	4,351	$149,107	4,605	$166,371	4,041	$197,404	65%	102%	45%
Total by Year	366,771	$ 10,860,085	412,930	$12,627,403	332,288	$11,387,521	423,761	$15,310,484	324,249	$15,839,588	16%	41%	-12%
*Total by Year (without SUNY)	289,003	$8,557,384	319,426	$9,768,061	253,280	$8,679,914	344,547	$12,448,486	249,503	$12,188,242	19%	45%	-14%

Total MOT hrs since 2003: 1,860,000 — Total MOT $'ers spent since 2003: $66,025,081

*Total MOT hrs since 2003 (without SUNY data): 1,455,760 — *Total MOT $'ers spent since 2003 (without SUNY data): $51,642,088

Notes:

* Figures exclude SUNY data.

Two agencies, OSC and DCS, were removed due to the negligible amount of overtime actually utilized.

In March 2001 AFT study asked the readers of "Healthwire" to tell them about their experiences with mandatory overtime through a survey – the Mandatory Overtime Survey. The survey indicated that of the nurses th working overtime nearly half (49 percent) of the overtime hours were mandatory.

The figures in this chart are based on the "New York State Nurse Overtime Hours & Dollars Expended on Overtime (by agency)" chart. Calculation of Mandatory Overtime - HOURS: 49% was applied to the overtime estimate the percent of overtime hours that were mandatory. DOLLARS: I divided the total overtime dollars for each year by the total overtime hours worked to find a "dollar per OT hour figure." After estimating the overtime hours that could be assumed to be mandatory, the "dollar per hr figure" that was found for each year was applied to the mandatory overtime hours.

Data is originally from OSC database

* In March 2001 AFT asked the readers of "Healthwire" to tell them about their experiences with mandatory overtime through a survey – the Mandatory Overtime Survey. The majority of the respondents to the survey (89%) were RNs and their demographics mirrored the demographics of the nurse population as a whole. Most respondents came from the New York/New Jersey area (58.2%). The majority worked in acute care hospitals (58.3%).

...that these mandated overtime hours have been consistently used in most state agencies is evidence that mandatory overtime is a deliberate staffing tool rather than a tool of last resort.

overtime hours have been consistently used in most state agencies is evidence that mandatory overtime in state agencies is a deliberate staffing tool rather than a tool of last resort. Further evidence is the number of direct care nursing vacancies in those agencies. Since March 2000 the number of direct care nursing vacancies in the state agencies has increased by 24 percent. If you exclude SUNY, nursing vacancies in the remaining state agencies have increased by almost 50 percent. (see Table 6). The most recent vacancy data increased only slightly from the March 2007 rate. For the purpose of comparing the overtime data with the vacancy data, the 2007 data will be used.

Table 6
Number of Direct Care Nursing Vacancies
Major New York State Agencies (2000 - 2008)

Agency:	3/29/00	3/28/01	3/27/02	3/26/03	3/24/04	3/23/05	3/22/06	3/21/07	4/30/08	March 2000 - March 2008 Change	% Change	March 2(2 Change
DCS	3	3	4	5	8	4	6	3	3	0	0%	-2
DOCS	88	132	133	148	158	134	114	131	144	56	64%	-17
DOH	41	79	64	69	71	83	97	122	110	69	168%	53
SED	2	3	2	2	2	4	6	7	8	6	300%	5
OASAS	12	15	15	17	17	21	18	16	22	10	83%	-1
OCFS	6	8	12	17	22	16	17	18	16	10	167%	1
OMH	671	687	745	840	920	914	965	989	958	287	43%	149
OMRDD	106	112	143	131	136	135	138	150	136	30	28%	19
SUNY	968	840	990	1017	1062	979	768	883	960	-8	-1%	-134
Total:	1,897	1,879	2,108	2,246	2,396	2,290	2,129	2,319	2,357	460	24%	73
Total without SUNY:	929	1,039	1,118	1,229	1,334	1,311	1,361	1,436	1,397	468	50%	207

The data in Table 5 and 6 and summarized in Table 7 show a correlation between an increase in direct care nursing vacancies in state facilities and an increase in the use of overtime and mandatory overtime. **Excluding SUNY, direct care nursing vacancies in state facilities increased by over 17 percent between March 2003 and March 2007, while the use of overtime/mandatory overtime at these facilities increased by 19 percent.** The correlation is very strong in some state agencies. For example, in OMH between March 2003 and March 2007 the number of direct care nursing vacancies increased by nearly 18 percent, while overtime/mandatory overtime increased by 20 percent. A similar relationship exists during this time period in the Department of Health and the Office of Children and Family Services (see Table 7).

This correlation does not exist for the Department of Correctional Services (DOCS), the Office of Substance Abuse Services (OASAS) or in the State University of New York (SUNY). However, the number of direct care nursing vacancies in DOCS increased by nearly 50 percent and in OASAS by 33 percent between March 2000 and March 2007, and it is likely that this lower staffing level probably influenced the increase in the use of mandatory overtime between March 2003 and March 2007.

The reduction in nursing vacancies at the SUNY hospitals is due to an expansion of services at these facilities and increased acuity level of their patients. Since 2003 SUNY has significantly decreased their number of direct care nursing vacancies and increased their number of filled direct care nursing positions, which has helped them curtail the use of overtime.

OMRDD also slightly decreased the number of overtime hours worked by their direct care nurses between March 2003 and March 2007 even though their nursing vacancies increased. However, OMRDD could not

Table 7
Mandatory Overtime for State Agency Nurses often Increases in Relation to the Increase in the number of direct care nursing vacancies

March 2003 - March 2007		
	% Change in	
Agency	Nursing Vacancies	Nursing OT/MOT Hrs
DOCS	-11%	24%
DOH	77%	4%
SED	250%	-44%
OASAS	-6%	65%
OCFS	6%	15%
OMH	18%	20%
OMRDD	15%	-3%
SUNY	-13%	2%
Total:	3%	16%
Total without SUNY:	17%	19%

Eighty percent of hospitals that responded to the survey claimed to have a shortage of registered nurses.

maintain their decreased use of overtime. Between SFY 2005 and SFY 2006 the number of overtime hours worked by direct care nurses in OMRDD actually increased by 15 percent while their number of direct care nursing vacancies increased by 9 percent. This provides further proof that an increase in direct care nursing vacancies in state agency facilities leads to an increased use of both overtime and mandatory overtime for their direct care nurses.

A broader examination of New York state hospitals' job-vacancy rate for nurses depicts a similar story. According to a study released in May 2008 by the Healthcare Association of New York State, the job-vacancy rate for nurses in both public and private hospitals increased from 6.38 percent in 2006 to 8.8 percent in 2007. This vacancy rate is higher than the national average, which is 8.5 percent. Eighty percent of hospitals that responded to the survey claimed to have a shortage of registered nurses. With a vacancy rate that is currently outpacing the national average, it is time for New York state hospitals to improve their working conditions in order to encourage and keep more nurses.

Other national research studies confirm our claim that hospitals do not use mandatory overtime as a last resort, but rather use it as a staffing tool to cut costs. Ann Rogers et al in their most recent report, *The Working Hours of Hospital Staff Nurses and Patient Safety* (University of Pennsylvania Report), provide several statistics that show how frequently overtime is being used by hospitals. According to this report:

- RNs generally worked longer than scheduled daily, and they also typically worked more than 40 hours per week. A recent survey of direct care nurses working for the state of New York showed that on average nurses worked more than 100 additional hours of uncompensated overtime annually.

- During the study, RNs were routinely scheduled to work shifts that exceeded 12 hours (31 percent).

- While 31 percent were scheduled to work 12 hours or more, 38.7 percent actually worked more than 12.5 hours.
- The longest reported shift was 23 hours, 40 minutes.
- Nurses reported leaving work at the end of their scheduled shift less than 20 percent of the time during the reporting period.
- Almost two-thirds of the nurses worked overtime at least 10 times during the reporting period, and one-third of the nurses reported working overtime every day during the reporting period.

While hospitals in New York state are using mandatory overtime as if it is a cost-saving measure, the reality is that it generates larger costs than savings

The report also examined mandated overtime. Nurses in the study reported that they worked mandatory overtime in 360 of the shifts examined. Approximately 142 other shifts reported being "coerced" to work "voluntary" overtime.[8] Together, this means that the nurses worked mandated overtime in almost 10 percent of the 5,317 shifts examined in the study. The findings in the Rogers study mirrored the findings in several other studies. The authors noted: "More than one-quarter of nurse participants (28.7 percent) reported working mandatory overtime at least once during the data-gathering period. This percentage is quite similar to that reported in two surveys of more than 47,000 nurses and in a 'Quick Poll' posted on the American Association of Critical Nurses Web site."[9]

Study after study provides sound proof that overtime is not being used as a last resort, "after exhausting all other available strategies," as hospitals claim. Hospitals say that they *NEED* to use mandatory overtime, but perhaps the "need" is really related to a shortsighted perspective that it is less expensive to over extend the staff on hand rather than pay the salary and benefits of the additional staff needed. While hospitals in New York state are using mandatory overtime as if it is a cost-saving measure, the reality is that it generates larger costs than savings – costs in the form of increased turnover; longer patient stays; and higher rates of medical errors that have a significantly negative impact on patient care.

MANDATORY OVERTIME HAS A NEGATIVE IMPACT ON PATIENT CARE

There is clear evidence that overtime is not only driving nurses from the profession but also creating dangerous situations for patients. Patient care is a nurse's first responsibility, but forcing health caregivers to work 50 to 60 hours per week can be deadly. When a nurse is on a third consecutive shift, suffering from sleep deprivation due to excessive overtime – at no fault of their own – judgment may be impaired. Prolonged periods of wakefulness (17 hours without sleep) can cause a reduction in performance equivalent to a blood alcohol concentration of

0.05 percent, according to an Institute of Medicine Report.[10] Allowing nurses to continue working under conditions similar to intoxication raises serious concerns about patient safety.

The negative effect of mandatory overtime is most evident when you examine the number of medical errors and the number of lives lost due to preventable mistakes. As many as 98,000 hospital patients die annually in the United States as the result of medical errors according to the landmark study – *To Err is Human – a report by the Institute of Medicine (IOM)*. New York state accounts for 6,600 of these fatal errors, which places medical errors among the leading causes of death. Nationally, more people die from medical errors than car accidents (43,458), breast cancer (42,297), or AIDS (16,516). The New York specific statistics rank medical errors above several leading causes of death as well (see Table 8).

...nurses working more than 12 hours were three times more likely to make medical errors

Table 8: New York State Deaths from Selected Causes*

Rank	Cause of Death	Number of Deaths Annually
1	Major Cardiovascular Diseases	72,310
2	Diseases of the Heart	60,628
6	Acute Myocardial Infarction	14,105
7	Other Diseases of the Heart	11,494
8	Respiratory System	9,931
12	Pneumonia	6,623
**	**Medical Errors**	**6,600**
13	Chronic Obstructive Pulmonary Disease (COPD)	6,065
19	Breast Cancer (Female)	3,308
21	Acquired Immune Deficiency Syndrome (AIDS)	3,010
23	Motor Vehicle	1,811

*Based on 1997 statistics so that the figures will be comparable to the IOM national findings. Statistics are from the New York State Vital Statistics - 1997 Annual Report. ** The NYS medical errors data is not part of the NYS Vital Statistics, it is based on data extrapolated from the IOM national figure for medical errors.

According to an investigative report by the *Chicago Tribune*, at least 1,720 hospital patients nationwide were accidentally killed and 9,584 others injured "from the actions or inactions of registered nurses across the country." The report found that these deaths and injuries caused by nurses were due to cuts in staff and other belt-tightening in U.S. hospitals.[11]

In examining errors that are more directly related to nursing, the University of Pennsylvania study examined 393 hospital staff nurses' logbooks, and found **that nurses working more than 12 hours were *three times* more likely to make medical errors** (most errors were related to medication administration, procedural charting, and transcription errors). The risks of making an error increase when: work shifts are greater than twelve hours; nurses worked more than forty hours per week; and when nurses work overtime.[12]

The increased risk nurses are forced to undertake translates into an increased risk for their patients. Errors in administering medication alone have been estimated to cause 7,000 American deaths per year.

Mandatory overtime legislation would protect patients from being cared for by overworked, exhausted caregivers who have a higher tendency for errors.

According to an AFSCME-commissioned study this estimate translates to an expectation that, on average, "two out of every 100 patients admitted to a hospital," nationwide, will suffer a preventable medication error.[13] In New York state, approximately 1,400 people die each year due to medication errors.[14]

Based on studies by the Michigan Nurses Association and several other nursing and health care associations, it is conservatively estimated that 5 percent of medical errors are due to mandatory overtime for nurses.

In New York this means at least 330 lives are lost annually due to medical errors caused by mandatory overtime for nurses.

Beyond medical and medication errors, extensive overtime directly affects patient care and safety in the following ways:

- Increase in nosocomial (hospital acquired) infections;
- Increase in decubiti (pressure ulcers); and
- Overall, the nurse may be less alert to changes in patients' condition.[15]

This is only a short list of the numerous threats to patient safety that are related to excessive overtime. This is not a new issue. More than a decade ago, the death of a patient in New York state was directly connected to the number of hours worked by a medical resident. That death led to the Department of Health limiting the number of consecutive shifts that a medical resident could provide patient care.[16] With an increase in errors already connected to the number of hours worked by nurses, now is the time to react, and now is the time for change.

Mandatory overtime legislation would protect patients from being cared for by overworked, exhausted caregivers who have a higher tendency for errors. These errors are avoidable and could be prevented with an appropriate staffing plan. Mandatory overtime is putting patients' lives at risk, and it is the state's responsibility to protect the patients by severely restricting the use of mandatory overtime.

THE HIDDEN COSTS OF MANDATORY OVERTIME

Hospitals are making staffing decisions based on the theory that extending nurses' work hours, mandating overtime, and increasing the workload will cost the facility less than hiring the additional full-time nurses (or temporary staff) that are needed to alleviate staffing gaps. By failing to fill the current gap in staffing, hospitals are encouraging larger gaps as more nurses leave the profession. Fewer nurses and longer hours result in more medical errors and more malpractice suits and awards.

Nurse dissatisfaction can have a very serious economic impact on a health care facility.

The Hidden Costs of High Nurse Turnover and Refilling Nursing Vacancies

Nurse dissatisfaction can have a very serious economic impact on a health care facility. Hospitals with high levels of employer satisfaction have a turnover rate of less than 10 percent.[17] However, dissatisfied employees cause hospital staff turnover rates to be much higher. When a facility's turnover rate is greater than 22 percent, according to the Joint Commission on Accreditation of Healthcare Organizations (JCAHO), hospital costs tend to increase, while profitability, productivity, efficiency, and quality decrease. Hospitals with low turnover rates (under 12 percent) not only save money due to lower patient lengths of stay, but also have lower mortality rates. Hospitals with a staff turnover rate of 20 percent or more have a 36 percent higher cost per-patient discharge than a hospital with lower rates of staff turnover.[18]

- **The Hidden Financial Impact of High Nursing Staff Turnover:** Patient costs at high turnover hospitals were almost $2,000 more per discharge than at lower-turnover hospitals (in 2000).[19]

Another cost related to the turnover rate is the cost of filling vacancies. The JCAHO, among other state and national reports, cite research performed by the Voluntary Hospitals of America (VHA). The VHA has completed a number of studies to place a dollar value on the cost savings that its members could obtain by reducing the nursing turnover rates within their hospitals. The VHA has been able to connect the staff turnover rates and high vacancy rates to having an actual impact on a facility's financial status. According to the VHA's findings, it costs 100 percent of a nurse's salary to fill a vacated nursing position.

- **The Hidden Financial Impact of Refilling Nursing Vacancies:** Based on a 20 percent turnover rate,* a hospital with 600 nurses will spend $6.9 million a year in replacement costs ($57,784 spent per RN, per year)[20].

The Hidden Costs of Medical Errors Caused by Mandatory Overtime

Increased medical errors are partially a result of nurses working long hours, unexpected mandated overtime, and nurse fatigue or burnout. The Institute of Medicine (IOM) has estimated that preventable medical errors cost hospitals, nationwide, between $17 billion and $29 billion annually. The estimate of that cost included the expense of additional care made necessary by the errors; lost income and household productivity; and disability. What is not accounted for is the number of insurance claims and medical malpractice lawsuits that may increase due to errors.

* VHA cites 20 percent as the current average turnover rate among health care workers.

The elimination of mandated overtime could not only save 330 lives annually, but save New York hospitals approximately $98 million...

Utilizing the figures cited in the IOM report, the cost of preventable errors is estimated to be as great as $295,918 for each of the 98,000 patients that are likely to die each year. In New York this translates to as many as 6,600 preventable deaths that may occur in the hospitals each year, for an annual cost of almost $2 billion. Approximately 330 of these preventable deaths can be directly attributed to mandatory overtime and nurse fatigue.

- **The Hidden Financial Impact of Medical Errors Caused by Mandatory Overtime:** The elimination of mandated overtime could not only save 330 lives annually, but save New York hospitals approximately $98 million in costs related to complications or additional necessary care due to preventable medical errors (assuming that five percent of medical errors can be connected to nurses working mandatory overtime).**

A subset of medical errors that are more likely to be caused by mandatory overtime are medication errors. If you look at the annual number of deaths in New York state hospitals due to medication errors (approximately 1,400) and conservatively assume that 5 percent are due to the use of mandatory overtime, banning the use of mandated overtime could result in 70 fewer patient deaths each year in New York hospitals.

- **The Hidden Financial Impact of Medication Errors Caused By Mandatory Overtime:** Eliminating mandated overtime could not only save 70 lives annually, but save New York hospitals approximately $20.7 million in costs, which would have been spent each year, due to medication errors.

Some medical errors may lead to insurance claims and litigation, which can be very expensive for the hospital and the overall healthcare system. As noted by the AHA, the cost of liability coverage for many hospitals, nationwide, has doubled between 2001 and 2003. In New York state, the cost of malpractice insurance, in downstate hospitals, has increased 147 percent since 1999 (an average premium increase of 27 percent each year).[21]

A less obvious cost is one that can lead to turnover and is rarely considered when overtime is mandated, the cost of stress. In fact, mandatory overtime is one of the leading factors that cause increased stress.

- **The Hidden Financial Impact of Job Stress:** Job stress costs United States industries $300 billion annually through absenteeism, employee turnover, insurance fees and diminished productivity.

Employee fatigue is another cost that is often not considered by the

Nursing is one of the ten occupations with the highest levels of occupational injury or illness requiring days away from work.

employer. While it may be difficult for the hospital to calculate this cost per facility, per hour mandated, the National Commission on Sleep Disorders has estimated that up to $150 billion per year is lost by companies due to employee fatigue.[22]

MANDATORY OVERTIME A MAJOR HEALTH AND SAFETY RISK FOR NURSES

Mandatory overtime poses a health and safety risk to the nurses forced to work. The negative consequences of working extended shifts (more than 12 hours) are not just limited to the impact on the nurse's physical health, but the disruption and stresses placed on social and family dynamics. Health care shows the second-highest turnover rate of all "extended hours" industries. Nursing is one of the ten occupations with the highest levels of occupational injury or illness requiring days away from work. A recent study conducted by Circadian Technology Inc, showed the risk of one of the most common nursing occupational injuries, needle sticks and incidents of biological fluid exposure, significantly increased in the last two hours of twelve hour shifts. No increase in these incidents was found in the last two hours of an eight hour shift.[23]

Fatigue, and its influence on behaviors associated with safe work practices, is also of great concern. Nurses are routinely called upon to make decisions that have potential life-and-death consequences for the patient and the nurse, regardless of the time of day or number of hours they have already worked. The effects of fatigue include slow reaction time, lapses of attention to detail, errors of omission, compromised problem solving, reduced motivation, and decreased energy for successful completion of required tasks.

Take into consideration the story of PEF nurse Icilda Innocent, a community mental health nurse for OMRDD. In testimony given to the NYS Assembly Committees on Labor and Health, Icilda gave the following statement about working three straight eight-hour shifts: "When you work 16 or 24 hours straight in a row, you cannot think clearly. The fatigue affects you emotionally and physically. You become fearful that you will make a mistake. You fear you may administer the wrong medication or dosage to a patient."

Traffic deaths that occur while driving home from a double shift are not counted as workplace fatalities, but they should be. Two studies show a direct correlation between an increase in the number of hours that nurses are required to work and car crashes.[24] Ninety-six percent of ICU nurses in another study reported car crashes or near misses while driving home after a night shift.[25]

** The 5% estimate and this type of cost-benefit analysis is a calculation that has been performed by several other associations including the Michigan Nurses Association (The Cost of Mandatory Overtime, August 2004) all of which have placed a dollar value on the benefits related to banning mandatory overtime.

You become fearful that you will make a mistake. You fear you may administer the wrong medication or dosage to a patient.

In addition, after being mandated to work overtime, nurses employed by the state of New York were expected to return to work after going home for only one (7 hour) shift. With travel time that could mean as little as 4 – 5 hours off to handle personal responsibilities and rest.

Another health risk is the effect of workplace stress, which research shows, is exacerbated by long hours on the job. The Nurses Health Study (*British Medical Journal,* May 2000) shows that women in jobs with high work demands and limited job control—frequently the circumstances surrounding mandatory overtime—are more likely to suffer poor health than are women who have more flexible jobs with reasonable demands. Nursing jobs with high pressure to work overtime and low rewards were most often associated with significant health complaints, burnout, and negative work-family/home interference.

Nurses working long hours or night shifts are at increased risk of musculoskeletal injuries because of reduced recovery time between shifts that nurses need to allow their backs to rest and heal. Nurses develop musculoskeletal injuries through the cumulative effect of repetitive actions, lifting and transferring patients, moving heavy, awkward equipment, and stretching to work in poorly designed spaces.

There has also been research done on the impact of overtime on cardiovascular health, although the research has not focused specifically on nurses and much of it has been done on men. Overtime work has been shown to increase 24-hour average blood pressure in workers who worked 60 or more hours of overtime per month compared to those working 30 or fewer hours of monthly overtime.[26]

The more plentiful body of literature on shift work indicates that shift rotators, especially night shift rotators, experience a higher incidence of cardiovascular disorders, gastrointestinal disorders, and a higher incidence of work-related injuries. Enlightened employers use this knowledge to improve scheduling and work organization. Long hours are also associated with unhealthy habits such as smoking, excessive caffeine intake, alcohol consumption, poor diet, and lack of exercise.

SECTION TWO

FOURTEEN STATES HAVE RESTRICTED MANDATORY OVERTIME

As of May 2008, eleven states – Connecticut, Illinois, Maine, Maryland, Minnesota, New Hampshire, New Jersey, Oregon, Rhode Island, Washington, and West Virginia – have enacted legislation restricting or altogether banning mandatory overtime for nurses and other caregivers. In addition, three other states – California, Missouri, and Texas – have adopted regulations governing overtime within these professions. Some of the states, including Oregon and Texas, have been able to work with

Action at the state level is proof that there is an awareness of the negative effects of mandatory overtime.

the hospital associations in their states for staffing legislation or regulation. Action at the state level is proof that there is an awareness of the negative effects of mandatory overtime. It is also proof that hospitals can comply with such laws without endangering patient safety or suffering financial hardship.

It is particularly important to note that both Connecticut and New Jersey have enacted mandatory overtime laws and that one of the major opponents to enacting a similar law in New York is the Greater New York Hospital Association (GNYHA) which also represents hospitals in Connecticut and New Jersey as well as New York hospitals that have entered into contractual agreements to limit mandatory overtime. The fact that GNYHA currently represents hospitals that have successfully implemented limits on mandatory overtime undermines their argument that restricting mandatory overtime will threaten patient safety and the finances of the hospitals they represent in New York.

Enacted Legislation

MAINE

On August, 11, 2000, Maine became the first state to enact a mandatory overtime law, which covers both registered nurses (RNs) and licensed practical nurses (LPNs), but not other health care workers. Maine defines overtime as hours worked in excess of 40 hours a week, with exceptions in case of an emergency.

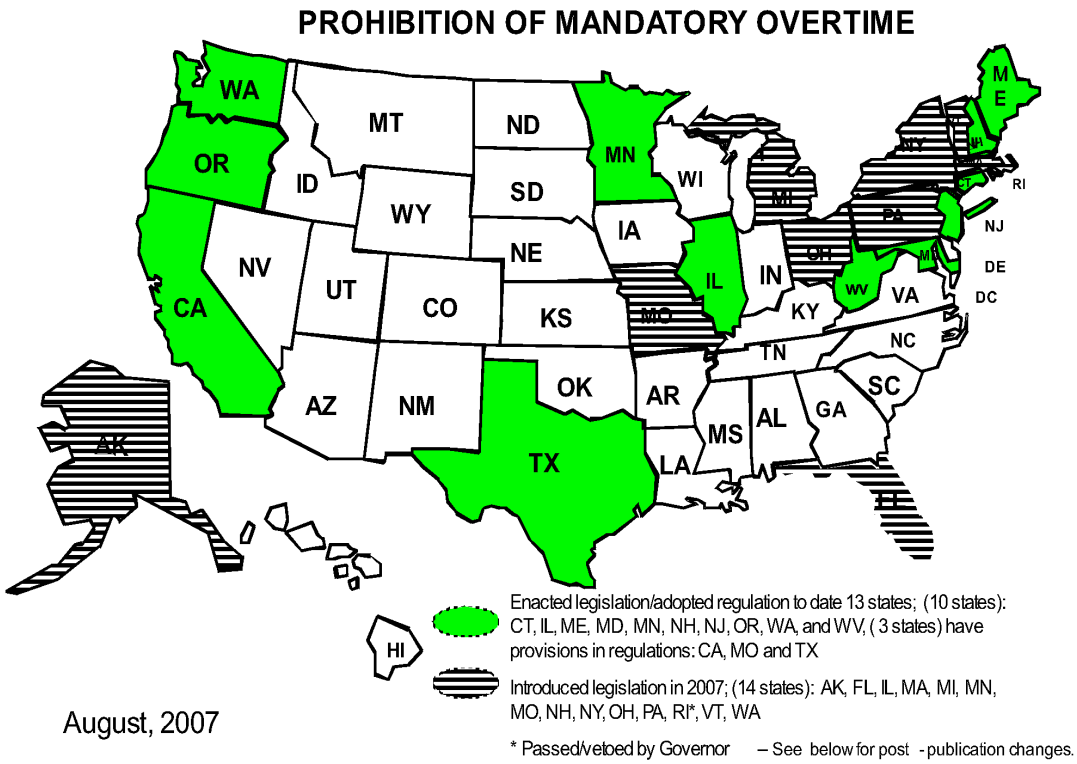
In September 2001, the law was amended to include that no nurse may be disciplined for refusing to work more than 12 consecutive hours except in cases required to ensure patient safety. Nurses required to work in such instances will be given at least 10 hours off before being required to work again.

NEW JERSEY

After a five year struggle that began in 1999, New Jersey (NJ) has legislation that prohibits the use of mandatory overtime to solve chronic short staffing problems. The legislation became effective as of February 2004, despite having been signed into law more than a year before implementation. The law prohibits the use of mandated overtime in any health care facility licensed by the NJ Department of Health and Senior Services, in any state or county psychiatric hospital, state developmental center or health care service firm registered by the Division of Consumer Affairs in the Department of Law and Public Safety. The law covers all hourly workers who provide patient care or clinical services including nurses, nurse's aides, pharmacists, therapists, and technicians who do testing, but not doctors.

The law allows the use of mandatory overtime only in emergencies and

The American Nurses Association's Nationwide State Legislative Agenda



August, 2007

Note: After this map was published the RI legislators enacted mandatory overtime prohibitions with an October 2007 override of the Governor's July 2007 veto. This brings the number of states with legislation or regulations up to 14.

when efforts to solve facility short staffing problems are exhausted. Nurses are allowed up to an hour to arrange for family care if working mandatory overtime. Nurses who believe that they are being required to work mandatory overtime to solve chronic short-staffing problems can file a complaint with the NJ Department of Labor.

CONNECTICUT

In May 2004, Connecticut passed legislation to prohibit mandatory overtime for RNs, LPNs, or certified nurses' aides (CNAs) in hospitals. Exceptions include participating in surgical procedures and emergencies. The law also requires that the work shift be announced not less than 48 hours prior to the beginning of the shift.

Nurses still have the ability to volunteer for additional hours, but this law provides protection for nurses and allows them to refuse overtime without being penalized. This law ensures that "fatigue, inefficiency, and pressure that can result from mandatory overtime do not impede on the quality of patient care."[27]

The law allows the use of mandatory overtime only in emergencies and when efforts to solve facility short staffing problems are exhausted.

Connecticut Senator Melodie Peters, who introduced the bill and led the Senate to pass the bill unanimously, described the "forced overtime" in Connecticut's healthcare facilities as having reached "epidemic proportions."[28]

Prior to the passage of this law, Connecticut's nursing schedules were routinely posted with gaps. The Connecticut mandatory overtime law took the actions necessary to address such scheduling gaps.

OREGON

Oregon's Safe Nursing Care Act was signed into law on June 26, 2001, and became effective October 1, 2002. The law calls for a two-hour limit on mandatory overtime. The two-hour timeframe is to give hospitals sufficient time to find a replacement RN. According to the law implemented in 2002, mandatory overtime cannot exceed 16 hours in a 24 hour period, though exceptions are allowed during critical staffing shortages. However, due to a 2005 amendment, the Oregon law now prohibits a hospital from requiring a nurse to work more than 48 hours in a week or more than 12 consecutive hours in a 24-hour period. While there are a few exceptions to the limits on mandatory overtime, nothing prevents a nurse from working voluntary overtime.

To ensure compliance, the Oregon State Health Division is responsible for auditing no less than 10 percent of hospitals each year.
Other key areas of the Safe Nursing Act include:

- Patient Abandonment- the law now clarifies nurse's rights when an employer attempts to use patient abandonment to force nurses to work overtime.

- Enforcement Standards-the state Health Division can impose financial penalties when hospitals violate provisions in the law, as well as conduct random audits and prohibit using a JCAHO review in lieu of a state audit.

- Whistleblower Protection- the law protects RNs when reporting unsafe care or illegal activities internally. The law also provides RNs, who have been subject to retaliation by their employer for protected activities, the right to sue in court.

WASHINGTON

Washington passed legislation in March 2002 restricting private-sector health care facilities from requiring RNs and LPNs to work overtime (beyond the established schedules or agreed upon workweeks) except during emergencies. The Washington statute prohibits nurses from working a scheduled shift that is greater than 12 hours in a 24-hour

period or more than 80 hours in 14 consecutive days.

Washington allows voluntary overtime and provides protection for those that refuse to work overtime. The health facilities covered by this statute are hospices, acute care hospitals, rural health care facilities, private psychiatric facilities, and nursing homes or home health agencies.

During the 2008 legislative session, much like prior sessions, a bill was introduced to expand the kinds of health care facilities that would be subject to the state's mandatory overtime restrictions, including state hospitals, veterans' homes, residential habilitation centers, and correctional facilities. The bill was not passed during the prior legislative sessions. (This bill was (re)introduced in the 2005, 2006, and 2007 legislative sessions.)

In May 2004, Connecticut passed legislation to prohibit mandatory overtime for RNs, LPNs, or certified nurses' aides (CNAs) in hospitals.

There does not appear to be any hard data on the positive or negative effect of MOT legislation. However, information from the state of Washington indicates that hospital's reported a significant decrease in nurse vacancy rates two years after the implementation of the MOT legislation.[29]

MINNESOTA

In March 2002, Minnesota passed a bill to regulate nurses' overtime, the Mandatory Overtime Prevention Act (MOPA). MOPA prohibits a hospital from "taking any action against a nurse solely on the grounds that the nurse fails to accept an assignment of additional consecutive hours at the facility in excess of a normal work period."[30] The law only allows the nurse to decline the additional hours if they feel that working those hours may, in the nurse's judgment, jeopardize patient safety. A normal work period, as defined by this law, generally means 12 or fewer consecutive hours.

Minnesota's law protects all RNs and LPNs employed in hospitals or other health care facilities licensed by the Commissioner of Health. The law does not include nursing homes or long-term care facilities because Minnesota already has a rule that limits overtime for those facilities. However, during the 2006 legislative session the Minnesota Nurses Association pushed for MOPA to be amended to provide protection to "all nurses working in State Service."[31] Effective August 1, 2007, this law was expanded to provide protection for state-employed nurses involved in resident or patient care, regardless of the type of facility. The Corrections Department employees will be protected under this law as of July 1, 2008.

MARYLAND

In 2002, Maryland instituted a law that prohibits mandatory overtime for nurses. The law prohibits employers from requiring RNs or LPNs to

Washington passed legislation in March 2002 restricting private-sector health care facilities from requiring RNs and LPNs to work overtime.

work more than their regularly scheduled hours according to a predetermined work schedule, and protects nurses who refuse to work overtime. Maryland provides an exception for emergencies that could not be reasonably anticipated. The law allows nurses to volunteer to work more than the scheduled hours.

A 2005 report, released by the Maryland Statewide Commission on the Crisis in Nursing showed from 2001 to 2005, there was a 12 percent decrease in the percentage of nurses that reported working extra hours due to a fear of disciplinary action. Respondents reported:

- working fewer 8-hour shifts;
- an increased use of flexible scheduling;
- a 30 percent decrease in the reports of "mandatory extra hours" being worked by the nurses surveyed in the prior 12 months;
- an increase in "coerced" overtime due to reasons of patient safety concerns and peer commitment; and
- a decrease in voluntary extra hours by 6 percent.

The new law no longer allows mandatory overtime to be used as a scheduling tool. Deborah Egel, RN, Esq. testified at the Joint Hearing of the New York State Assembly Standing Committee on Labor and Health (May 18, 2006) that there is a volunteer list in Maryland and it works. Ms. Egel explained that nurses volunteer because they have advance notice and the ability to plan around working overtime.

WEST VIRGINIA

On May 17, 2004 a law was enacted that bans private hospitals in West Virginia from forcing RNs or LPNs to work overtime. The law does not cover the nurses working at the four state-run hospitals or four federal veterans' hospitals.

The law requires that nurses who have worked more than twelve consecutive hours be given at least eight consecutive hours off. The prohibition does not apply to voluntary overtime or collective bargaining agreements that have established overtime policies. Forced overtime is allowable during a natural disaster, a disease outbreak or when a nurse is participating in a surgical procedure.

This law, according to an update provided by the American Organization of Nurse Executives' eNews, was unanimously passed by the State House and Senate, and represents a compromise reached by the Hospital Association, Nurse Association, and the legislators.

ILLINOIS

Illinois passed a law in July 2005 to prohibit private hospitals from

In 2002, Maryland instituted a law that prohibits mandatory overtime for nurses.

requiring any hourly advanced practice nurse, registered professional nurse or LPN to work in excess of a predetermined work shift, except for in certain circumstances. The law was based on an agreement between the Illinois Nurses Association and the Illinois Hospital Association. Even when nurses are required to work due to "unforeseen emergency circumstances" the mandated overtime is not allowed to exceed four hours beyond the standard work shift. This law also requires that any nurse mandated to work up to 12 consecutive hours be allotted at least eight consecutive hours off duty immediately following the shift.

The Illinois law prohibits discharge or discipline against a nurse solely because they refused to work overtime, other than for the circumstances provided for in the law. It also specifically states that an unforeseen emergency circumstance does not include any situation caused by a hospital's failure to have enough nursing staff to meet the "predictable" needs of its patients.[32]

Currently nurses at Illinois state-operated facilities can be required to work mandatory overtime.

State legislation was introduced in 2005, 2006, 2007, and 2008 to apply the current mandatory overtime restrictions to state facilities. Among the facilities included in this proposal are prisons, mental health facilities, and veterans' homes.

NEW HAMPSHIRE

Legislation that became effective January 1, 2008, prohibits employers from disciplining a registered nurse, licensed practical nurse, or a licensed nursing assistant for refusing to work more than 12 consecutive hours. There are a number of exceptions to this law, including:

- nurses participating in surgery (until the surgery is completed);
- a nurse working in a critical care unit, until another employee beginning a scheduled work shift relieves him or her;
- a nurse working in a home health care, until another qualified nurse or customary caregiver relives him or her;
- a public health emergency; or
- a nurse covered by a collective bargaining agreement containing provisions addressing the issue of mandatory overtime.

Nurses who work more than 12 consecutive hours (as permitted above) are entitled to at least eight consecutive hours of off-duty time immediately following the overtime hours worked. Additionally, the nurses can waive their protection against mandatory overtime by filling out a form and submitting it to the Department of Labor. The form is

Illinois passed a law in to prohibit private hospitals from requiring any hourly advanced practice nurse, registered professional nurse or LPN to work in excess of a predetermined work shift.

filled out voluntarily and can be revoked at any time in writing by the employee. Employers who violate this law can be fined $2500 for each violation.

RHODE ISLAND

The Rhode Island legislators enacted mandatory overtime prohibitions with an October 2007 override of the Governor's July 2007 veto. Rhode Island's new mandatory overtime law, which took effect on March 4, 2008, prohibits private, public or state hospitals, except in the case of a genuine emergency, from forcing nurses and nurse's aides (paid on the basis of an hourly wage) to work beyond their scheduled shift. The shift may be an 8, 10 or 12 hour shift, but at no time longer than 12 consecutive hours. The law allows nurses to voluntarily accept overtime and hospitals are allowed to require overtime in cases of disasters and severe emergencies, but hospitals are banned from punishing, discriminating against, dismissing, or discharging nurses who refuse overtime.

The Rhode Island law specifically states that mandatory overtime cannot be used to fill vacancies resulting from chronic short staffing.

Hospitals violating the terms of the law face a fine of $300 for each violation. Fines collected for violations will be used to help fund a Center for Health Professions. The primary goal of this Center will be to develop a sufficient, diverse, and well-trained health care workforce.

Adopted Regulations

CALIFORNIA

In July 1999, the "Eight-Hour-day Restoration and Workplace Flexibility Act of 1999" was signed into law. The legislation made the new overtime rules part of California Labor Code and under the new regulation registered nurses were no longer exempt from these overtime rules known as wage orders.

In June 2001, the California Industrial Welfare Commission amended Wage Orders 4 and 5 of the Labor Codes. The law as of January 1, 2005 provides restrictions for employees that are assigned to work a 12-hour shift. The regulation states that employees that work a 12-hour shift will not be required to work more than 12 hours in any 24-hour period except under certain circumstances, which can be declared by the chief nursing officer (or authorized executive). Those exceptions include a "health care emergency" and situations when facilities have taken all reasonable steps to provide the required staffing.[33]

Under these wage orders, an employee may be required to work up to 13 hours in a day (24-hour period) if the employee scheduled to relieve the

In July 1999, the "Eight-Hour-day Restoration and Workplace Flexibility Act of 1999" was signed into law in California.

"subject" employee does not report for duty as scheduled. If the relieving employee does not inform the employer more than 2 hours in advance of the scheduled shift that he/she will not be reporting to duty, the "subject" employee may be required to work 13 hours in order to provide coverage.

The regulation also provides that no employee can be required to work more than 16 hours in a day (24-hour period) unless it is done voluntarily (mutual agreement of employee and employer). The regulation also requires that if an employee works more than 24 consecutive hours they must receive at least eight consecutive hours of off duty immediately following the 24 hours worked.

These provisions apply to all private sector employees (including nurses) not governed by a collective bargaining agreement. In addition, voluntary overtime is not regulated by this law.

TEXAS

Texas regulations require hospitals to develop policy and procedures for mandatory overtime. The Texas Department of State Health Services' rules for nurse staffing in hospitals prohibit staffing based on mandatory overtime. The Texas Nurses Association pressed for the regulations to be adopted in 2002 which require that Texas hospitals "adopt, implement, and enforce a written staffing plan."[34] The plan must be constructed under the administrative authority of a chief nursing officer and in agreement with an advisory committee of nurse members. The Texas Nurses Association describes the hospital licensing rules as requiring: (1) the setting of nurse staffing levels with input from a nursing committee consisting of one third direct care nurses; (2) a written staffing plan evaluated annually on outcomes; and (3) policies on mandatory overtime.[35]

Texas regulations define mandatory overtime as "the time, other than on-call time, a nursing staff member is required to work at a hospital beyond the hours or days that were scheduled for the staff member." It also states that neither the length of the shift nor the number of shifts scheduled to work per week is the determinative factor in deciding whether the time is mandatory overtime.

Texas vacancy rates appear to be falling. In 2003 the Texas Hospital Association reported a vacancy rate of 11 percent while in 2004 the vacancy rate was 8.6 percent.*[36] A 2004 survey conducted by the Texas Department of State Health Services asked participants whether RN vacancy rates had decreased between FY 2002 and FY 2003. The findings indicated that almost half (43.8 percent) of the hospital participants reported that their hospital vacancy rates had decreased over the year.[37] Also reported in this survey is whether the hospital used mandatory overtime for RNs who are paid hourly. A majority (78.5

The Texas Department of State Health Services' rules for nurse staffing in hospitals prohibit staffing based on mandatory overtime.

percent) of the hospitals answered "no" to the question. The report concludes that over the past four years the number of employers who make overtime mandatory has declined.

MISSOURI

Since 2006, Missouri has had regulations requiring policies to be developed regarding the use of overtime. This regulation states that the policies should be based on certain standards, including that overtime not be mandated for any licensed nursing personnel except for when an unexpected nurse staffing shortage arises. The regulation further states that overtime can be mandated if the staffing shortage involves a substantial risk to patient safety, and in which case a reasonable effort must be applied to secure safe staffing before requiring the on-duty nursing personnel to work overtime (reasonable efforts are defined in the regulation). If nurses are required to work more than 12 consecutive hours, this regulation allows them the option of at least 10 consecutive hours of off-duty immediately following the overtime hours worked.

This regulation does not apply during times of unforeseeable emergency or when a hospital and a subsection of nurses commit, in writing, to a set predetermined staffing schedule or prescheduled on call time. (This regulation is found in Chapter 20-Hospitals; 19 CSR 30-20.096.)

SECTION THREE

NEW YORK NEEDS LEGISLATION LIMITING MANDATORY OVERTIME

This paper clearly documents that New York state nurses need protection from the abuse of mandatory overtime. It also documents that hospitals in New York state are not using mandatory overtime as a last resort but rather as a staffing tool to cut costs.

Currently, nurses in New York state are required to work long overtime hours, often including double shifts. In many cases, they are given little notice of this overtime requirement, creating family difficulties. If this were an occasional event due to unusual circumstances, it would be understandable. However, nurses often report that employers rely on repeated mandatory overtime assignments to fill staff scheduling gaps. These anecdotal reports are supported by national studies on the use of mandatory overtime as well as data concerning the use of mandatory overtime by New York state agencies that employ direct care nurses.

National studies have documented that repeated and excessive use of

* The 2004 Texas vacancy rate was based on vacancies reported during the period between January 25, 2004 and January 31, 2004

Mandatory overtime is a major cause of the current nursing shortage in New York and this shortage cannot be addressed until a law is enacted to restrict such overtime abuse.

mandatory overtime jeopardizes the quality of patient care. When nurses are exhausted by long hours and little rest, there is an increased risk of errors that endanger patients and sometimes causes their death. In addition mandatory overtime creates increased health and safety risks for nurses.

Every major nurses union in New York state supports legislative bill S.6342 (Morahan)/A.1898-B (Gunther) to prohibit mandatory overtime. This bill would prohibit mandatory overtime for nurses in most cases, with appropriate exceptions for emergencies. This legislative proposal does not prohibit a nurse from volunteering to work overtime, which is the more appropriate and safe way to fill short-term staffing needs.

The major provisions of this bill include the four major elements contained in mandatory overtime laws and regulations currently in place in several states including Connecticut and New Jersey:

- No health care employer shall require a nurse to remain on duty for a period longer than eight consecutive hours, or 40 hours in a 7 day workweek, except as consistent with the nurse's regularly scheduled work hours;
- A nurse will not be prohibited from voluntarily working overtime;
- Exceptions – limitations provided for in this bill will not apply during:
    - A health care disaster, such as a natural or other type of disaster that increases the need for health care personnel;
    - A federal, state, or county declaration of emergency; and
    - An unforeseen event that could not be prudently planned for and does not regularly occur. (In such cases, the bill also requires that a good faith effort be made by the employer to cover the overtime on a voluntary basis).
- Clarifies that nurses' refusal of overtime work does not constitute patient abandonment or neglect or professional misconduct as long as the nurse notifies the appropriate supervisor of their unavailability to work said overtime assignment.

Prohibiting mandatory overtime would improve the quality of patient care, save lives, reduce long-term costs for hospitals, and may encourage many professional nurses who have left nursing to return. Mandatory overtime is a major cause of the current nursing shortage in New York and this shortage cannot be addressed until a law is enacted to restrict such overtime abuse. The Public Employees Federation urges the legislature to support the nurses and the patients they care for and implement sensible restrictions on the use of mandatory overtime in New York state by enacting S.6342/A.1898-B into law.

The Public Employees Federation urges the legislature to support the nurses and the patients they care for and implement sensible restrictions on the use of mandatory overtime in New York.

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