



93RD GENERAL ASSEMBLY
State of Illinois
2003 and 2004
HB4373

Introduced 02/03/04, by Angelo Saviano

SYNOPSIS AS INTRODUCED:

210 ILCS 85/10.9 new
225 ILCS 65/10-45

Amends the Hospital Licensing Act. Provides that no nurse may be required to work overtime except in the case of an unforeseen emergent circumstance when overtime is required only as a last resort. Amends the Nursing and Advanced Practice Nursing Act. Adds providing direct nursing care to assigned patients in excess of 120 hours in a consecutive 14-day period from all settings and for all employers and agencies during each 2-week period except in the case of an unforeseen emergent circumstance in a hospital when overtime is required only as a last resort to the grounds for discipline under the Act. Effective immediately.

LRB093 18242 AMC 43941 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning nursing.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Hospital Licensing Act is amended by adding
5 Section 10.9 as follows:

6 (210 ILCS 85/10.9 new)

7 Sec. 10.9. Nurse overtime prohibition.

8 (a) As used in this Section

9 "Nurse" means any registered nurse, licensed practical
10 nurse, or assistive nursing professional who receives an hourly
11 wage and has direct responsibility to oversee or carry out
12 medical regimens or nursing care for one or more patients.

13 "Overtime" means work in excess of an agreed-to,
14 predetermined scheduled work shift not to exceed 16 hours in
15 any 24-hour period, or work in excess of 120 hours in a
16 consecutive 14-day period, but does not include time spent by
17 nurses being on call.

18 "On-call" means available for a specific time period but
19 not scheduled to a patient-specific assignment until and when
20 patient needs require nursing services and requested to work in
21 order to assure the availability of qualified, specialty staff
22 to meet an unexpected patient need or provide continuity
23 through completion of a case, treatment, or procedure.

24 "Unforeseen emergent circumstance" means an unexpected
25 circumstance calling for additional clinical assistance or
26 care where the employer has no reasonable alternative for
27 obtaining such care or assistance.

28 (b) No nurse may be required to work overtime except in the
29 case of an unforeseen emergent circumstance when overtime is
30 required only as a last resort. A nurse may be required to work
31 overtime if: (i) the work is a consequence of an emergency
32 situation which could not have been reasonably anticipated;

1 (ii) the nurse has critical skills and expertise that are
2 required for the work; (iii) the State has enacted its medical
3 disaster plan; or (iv) the standard of care for a patient
4 assignment requires continuity of care through completion of a
5 case, treatment, or procedure. In calculating overtime,
6 on-call hours are not considered until patient needs requires
7 nursing services and the nurse is then requested to work in
8 order to assure the availability of qualified, specialty staff
9 to meet an unexpected patient need or provide continuity
10 through completion of a case, treatment, or procedure.

11 (c) A violation of this Section must be proven by clear and
12 convincing evidence that a nurse was required to work overtime
13 against his or her will. The hospital may defeat the claim of a
14 violation by presenting clear and convincing evidence that an
15 unforeseen emergent circumstance, which required overtime work
16 only as a last resort, existed at the time the employee was
17 required or compelled to work.

18 (d) Every hospital must keep a summary of this Section
19 approved by the Director of Labor posted in a conspicuous and
20 accessible place in or about the premises wherever any person
21 subject to this Section is employed. The Department of Labor
22 must furnish copies of the summary on request to hospitals,
23 without charge.

24 Section 10. The Nursing and Advanced Practice Nursing Act
25 is amended by changing Section 10-45 as follows:

26 (225 ILCS 65/10-45)

27 (Section scheduled to be repealed on January 1, 2008)

28 Sec. 10-45. Grounds for disciplinary action.

29 (a) The Department may, upon recommendation of the Board,
30 refuse to issue or to renew, or may revoke, suspend, place on
31 probation, reprimand, or take other disciplinary action as the
32 Department may deem appropriate with regard to a license for
33 any one or combination of the causes set forth in subsection
34 (b) below. Fines up to \$2,500 may be imposed in conjunction

1 with other forms of disciplinary action for those violations
2 that result in monetary gain for the licensee. Fines shall not
3 be the exclusive disposition of any disciplinary action arising
4 out of conduct resulting in death or injury to a patient. Fines
5 shall not be assessed in disciplinary actions involving mental
6 or physical illness or impairment. All fines collected under
7 this Section shall be deposited in the Nursing Dedicated and
8 Professional Fund.

9 (b) Grounds for disciplinary action include the following:

10 (1) Material deception in furnishing information to
11 the Department.

12 (2) Material violations of any provision of this Act or
13 violation of the rules of or final administrative action of
14 the Director, after consideration of the recommendation of
15 the Board.

16 (3) Conviction of any crime under the laws of any
17 jurisdiction of the United States: (i) which is a felony;
18 or (ii) which is a misdemeanor, an essential element of
19 which is dishonesty, or (iii) of any crime which is
20 directly related to the practice of the profession.

21 (4) A pattern of practice or other behavior which
22 demonstrates incapacity or incompetency to practice under
23 this Act.

24 (5) Knowingly aiding or assisting another person in
25 violating any provision of this Act or rules.

26 (6) Failing, within 90 days, to provide a response to a
27 request for information in response to a written request
28 made by the Department by certified mail.

29 (7) Engaging in dishonorable, unethical or
30 unprofessional conduct of a character likely to deceive,
31 defraud or harm the public, as defined by rule.

32 (8) Unlawful sale or distribution of any drug,
33 narcotic, or prescription device, or unlawful conversion
34 of any drug, narcotic or prescription device.

35 (9) Habitual or excessive use or addiction to alcohol,
36 narcotics, stimulants, or any other chemical agent or drug

1 which results in a licensee's inability to practice with
2 reasonable judgment, skill or safety.

3 (10) Discipline by another U.S. jurisdiction or
4 foreign nation, if at least one of the grounds for the
5 discipline is the same or substantially equivalent to those
6 set forth in this Section.

7 (11) A finding that the licensee, after having her or
8 his license placed on probationary status, has violated the
9 terms of probation.

10 (12) Being named as a perpetrator in an indicated
11 report by the Department of Children and Family Services
12 and under the Abused and Neglected Child Reporting Act, and
13 upon proof by clear and convincing evidence that the
14 licensee has caused a child to be an abused child or
15 neglected child as defined in the Abused and Neglected
16 Child Reporting Act.

17 (13) Willful omission to file or record, or willfully
18 impeding the filing or recording or inducing another person
19 to omit to file or record medical reports as required by
20 law or willfully failing to report an instance of suspected
21 child abuse or neglect as required by the Abused and
22 Neglected Child Reporting Act.

23 (14) Gross negligence in the practice of nursing.

24 (15) Holding oneself out to be practicing nursing under
25 any name other than one's own.

26 (16) Fraud, deceit or misrepresentation in applying
27 for or procuring a license under this Act or in connection
28 with applying for renewal of a license under this Act.

29 (17) Allowing another person or organization to use the
30 licensees' license to deceive the public.

31 (18) Willfully making or filing false records or
32 reports in the licensee's practice, including but not
33 limited to false records to support claims against the
34 medical assistance program of the Department of Public Aid
35 under the Illinois Public Aid Code.

36 (19) Attempting to subvert or cheat on a nurse

1 licensing examination administered under this Act.

2 (20) Immoral conduct in the commission of an act, such
3 as sexual abuse, sexual misconduct, or sexual
4 exploitation, related to the licensee's practice.

5 (21) Willfully or negligently violating the
6 confidentiality between nurse and patient except as
7 required by law.

8 (22) Practicing under a false or assumed name, except
9 as provided by law.

10 (23) The use of any false, fraudulent, or deceptive
11 statement in any document connected with the licensee's
12 practice.

13 (24) Directly or indirectly giving to or receiving from
14 a person, firm, corporation, partnership, or association a
15 fee, commission, rebate, or other form of compensation for
16 professional services not actually or personally rendered.

17 (25) Failure of a licensee to report to the Department
18 any adverse final action taken against such licensee by
19 another licensing jurisdiction (any other jurisdiction of
20 the United States or any foreign state or country), by any
21 peer review body, by any health care institution, by any
22 professional or nursing society or association, by any
23 governmental agency, by any law enforcement agency, or by
24 any court or a nursing liability claim related to acts or
25 conduct similar to acts or conduct that would constitute
26 grounds for action as defined in this Section.

27 (26) Failure of a licensee to report to the Department
28 surrender by the licensee of a license or authorization to
29 practice nursing in another state or jurisdiction, or
30 current surrender by the licensee of membership on any
31 nursing staff or in any nursing or professional association
32 or society while under disciplinary investigation by any of
33 those authorities or bodies for acts or conduct similar to
34 acts or conduct that would constitute grounds for action as
35 defined by this Section.

36 (27) A violation of the Health Care Worker

1 Self-Referral Act.

2 (28) Physical illness, including but not limited to
3 deterioration through the aging process or loss of motor
4 skill, mental illness, or disability that results in the
5 inability to practice the profession with reasonable
6 judgment, skill, or safety.

7 (29) Providing direct nursing care to assigned
8 patients in excess of 120 hours in a consecutive 14-day
9 period from all settings and for all employers and agencies
10 during each 2-week period except in the case of an
11 unforeseen emergent circumstance in a hospital when
12 overtime is required only as a last resort. A nurse may be
13 required to work overtime in a hospital if (i) the work is
14 a consequence of an emergency situation that could not have
15 been reasonably anticipated; (ii) the nurse has critical
16 skills and expertise that are required for the work; (iii)
17 the State has enacted its medical disaster plan; or (iv)
18 the standard of care for a patient assignment requires
19 continuity of care through completion of a case, treatment,
20 or procedure.

21 (c) The determination by a circuit court that a licensee is
22 subject to involuntary admission or judicial admission as
23 provided in the Mental Health and Developmental Disabilities
24 Code, as amended, operates as an automatic suspension. The
25 suspension will end only upon a finding by a court that the
26 patient is no longer subject to involuntary admission or
27 judicial admission and issues an order so finding and
28 discharging the patient; and upon the recommendation of the
29 Board to the Director that the licensee be allowed to resume
30 his or her practice.

31 (d) The Department may refuse to issue or may suspend the
32 license of any person who fails to file a return, or to pay the
33 tax, penalty or interest shown in a filed return, or to pay any
34 final assessment of the tax, penalty, or interest as required
35 by any tax Act administered by the Illinois Department of
36 Revenue, until such time as the requirements of any such tax

1 Act are satisfied.

2 (e) In enforcing this Section, the Department or Board upon
3 a showing of a possible violation may compel an individual
4 licensed to practice under this Act, or who has applied for
5 licensure under this Act, to submit to a mental or physical
6 examination, or both, as required by and at the expense of the
7 Department. The Department or Board may order the examining
8 physician to present testimony concerning the mental or
9 physical examination of the licensee or applicant. No
10 information shall be excluded by reason of any common law or
11 statutory privilege relating to communications between the
12 licensee or applicant and the examining physician. The
13 examining physicians shall be specifically designated by the
14 Board or Department. The individual to be examined may have, at
15 his or her own expense, another physician of his or her choice
16 present during all aspects of this examination. Failure of an
17 individual to submit to a mental or physical examination, when
18 directed, shall be grounds for suspension of his or her license
19 until the individual submits to the examination if the
20 Department finds, after notice and hearing, that the refusal to
21 submit to the examination was without reasonable cause.

22 If the Department or Board finds an individual unable to
23 practice because of the reasons set forth in this Section, the
24 Department or Board may require that individual to submit to
25 care, counseling, or treatment by physicians approved or
26 designated by the Department or Board, as a condition, term, or
27 restriction for continued, reinstated, or renewed licensure to
28 practice; or, in lieu of care, counseling, or treatment, the
29 Department may file, or the Board may recommend to the
30 Department to file, a complaint to immediately suspend, revoke,
31 or otherwise discipline the license of the individual. An
32 individual whose license was granted, continued, reinstated,
33 renewed, disciplined or supervised subject to such terms,
34 conditions, or restrictions, and who fails to comply with such
35 terms, conditions, or restrictions, shall be referred to the
36 Director for a determination as to whether the individual shall

1 have his or her license suspended immediately, pending a
2 hearing by the Department.

3 In instances in which the Director immediately suspends a
4 person's license under this Section, a hearing on that person's
5 license must be convened by the Department within 15 days after
6 the suspension and completed without appreciable delay. The
7 Department and Board shall have the authority to review the
8 subject individual's record of treatment and counseling
9 regarding the impairment to the extent permitted by applicable
10 federal statutes and regulations safeguarding the
11 confidentiality of medical records.

12 An individual licensed under this Act and affected under
13 this Section shall be afforded an opportunity to demonstrate to
14 the Department or Board that he or she can resume practice in
15 compliance with acceptable and prevailing standards under the
16 provisions of his or her license.

17 (Source: P.A. 90-742, eff. 8-13-98.)

18 Section 99. Effective date. This Act takes effect upon
19 becoming law.