

**94TH GENERAL ASSEMBLY****State of Illinois****2005 and 2006****HB0877**

Introduced 2/2/2005, by Rep. Angelo Saviano

SYNOPSIS AS INTRODUCED:

210 ILCS 85/7 from Ch. 111 1/2, par. 148
210 ILCS 85/10.9 new
210 ILCS 86/25

Amends the Hospital Licensing Act and the Hospital Report Card Act. Provides that a nurse or unlicensed hospital worker may not be required to work overtime except in the case of an unforeseen emergent situation. Provides that a nurse or unlicensed worker may not be disciplined, discriminated against, dismissed, discharged, or retaliated against or made subject to any other adverse employment decision for refusing to work overtime. Provides that a nurse may not be required to work more than 12 consecutive hours in a 24-hour period. Provides that work schedules must be posted at least one month in advance and may not be changed after posting except by mutual agreement between nurses or unlicensed workers and the hospital. Provides that when a nurse or unlicensed worker works 12 consecutive hours, the nurse or unlicensed worker must be allowed at least 8 consecutive hours of off-duty time immediately following the completion of the shift. Authorizes a hospital employee to file a complaint with the Department of Public Health alleging a violation of these provisions, and authorizes the Director of Public Health to impose a monetary civil penalty if he or she determines that a violation has occurred. Provides that civil penalties shall be paid to the Department of Public Health and used by the Department for the purpose of funding scholarships awarded under the Nursing Education Scholarship Law. Provides that a hospital must post a summary of these provisions approved by the Director of Labor in a conspicuous and accessible place in or about the hospital premises wherever any person subject to these provisions is employed; provides that the Department of Labor must furnish copies of the summary to hospitals on request, without charge. Provides that violations of these overtime provisions must be reported to the Department of Public Health under the Hospital Report Card Act. Effective immediately.

LRB094 09350 DRJ 39592 b

FISCAL NOTE ACT
MAY APPLY

1 AN ACT concerning regulation.

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
5 changing Section 7 and by adding Section 10.9 as follows:

6 (210 ILCS 85/7) (from Ch. 111 1/2, par. 148)

7 Sec. 7. (a) The Director after notice and opportunity for
8 hearing to the applicant or licensee may deny, suspend, or
9 revoke a permit to establish a hospital or deny, suspend, or
10 revoke a license to open, conduct, operate, and maintain a
11 hospital in any case in which he finds that there has been a
12 substantial failure to comply with the provisions of this Act
13 or the Hospital Report Card Act or the standards, rules, and
14 regulations established by virtue of either of those Acts.
15 After notice to the licensee and an opportunity for a hearing
16 as provided in subsection (b), the Director may impose a
17 monetary civil penalty against a licensee for a violation of
18 Section 10.9 as provided in that Section.

19 (b) Such notice shall be effected by registered mail or by
20 personal service setting forth the particular reasons for the
21 proposed action and fixing a date, not less than 15 days from
22 the date of such mailing or service, at which time the
23 applicant or licensee shall be given an opportunity for a
24 hearing. Such hearing shall be conducted by the Director or by
25 an employee of the Department designated in writing by the
26 Director as Hearing Officer to conduct the hearing. On the
27 basis of any such hearing, or upon default of the applicant or
28 licensee, the Director shall make a determination specifying
29 his findings and conclusions. In case of a denial to an
30 applicant of a permit to establish a hospital, such
31 determination shall specify the subsection of Section 6 under
32 which the permit was denied and shall contain findings of fact

1 forming the basis of such denial. In the case of a violation of
2 Section 10.9, the determination shall specify the amount of the
3 monetary civil penalty imposed against the licensee. A copy of
4 such determination shall be sent by registered mail or served
5 personally upon the applicant or licensee. The decision
6 denying, suspending, or revoking a permit or a license shall
7 become final 35 days after it is so mailed or served, unless
8 the applicant or licensee, within such 35 day period, petitions
9 for review pursuant to Section 13. A monetary civil penalty
10 imposed against a licensee for a violation of Section 10.9 is
11 payable to the Department within 35 days after a copy of the
12 Director's decision imposing the penalty is sent by registered
13 mail or served personally upon the licensee.

14 (c) The procedure governing hearings authorized by this
15 Section shall be in accordance with rules promulgated by the
16 Department and approved by the Hospital Licensing Board. A full
17 and complete record shall be kept of all proceedings, including
18 the notice of hearing, complaint, and all other documents in
19 the nature of pleadings, written motions filed in the
20 proceedings, and the report and orders of the Director and
21 Hearing Officer. All testimony shall be reported but need not
22 be transcribed unless the decision is appealed pursuant to
23 Section 13. A copy or copies of the transcript may be obtained
24 by any interested party on payment of the cost of preparing
25 such copy or copies.

26 (d) The Director or Hearing Officer shall upon his own
27 motion, or on the written request of any party to the
28 proceeding, issue subpoenas requiring the attendance and the
29 giving of testimony by witnesses, and subpoenas duces tecum
30 requiring the production of books, papers, records, or
31 memoranda. All subpoenas and subpoenas duces tecum issued under
32 the terms of this Act may be served by any person of full age.
33 The fees of witnesses for attendance and travel shall be the
34 same as the fees of witnesses before the Circuit Court of this
35 State, such fees to be paid when the witness is excused from
36 further attendance. When the witness is subpoenaed at the

1 instance of the Director, or Hearing Officer, such fees shall
2 be paid in the same manner as other expenses of the Department,
3 and when the witness is subpoenaed at the instance of any other
4 party to any such proceeding the Department may require that
5 the cost of service of the subpoena or subpoena duces tecum and
6 the fee of the witness be borne by the party at whose instance
7 the witness is summoned. In such case, the Department in its
8 discretion, may require a deposit to cover the cost of such
9 service and witness fees. A subpoena or subpoena duces tecum
10 issued as aforesaid shall be served in the same manner as a
11 subpoena issued out of a court.

12 (e) Any Circuit Court of this State upon the application of
13 the Director, or upon the application of any other party to the
14 proceeding, may, in its discretion, compel the attendance of
15 witnesses, the production of books, papers, records, or
16 memoranda and the giving of testimony before the Director or
17 Hearing Officer conducting an investigation or holding a
18 hearing authorized by this Act, by an attachment for contempt,
19 or otherwise, in the same manner as production of evidence may
20 be compelled before the court.

21 (f) The Director or Hearing Officer, or any party in an
22 investigation or hearing before the Department, may cause the
23 depositions of witnesses within the State to be taken in the
24 manner prescribed by law for like depositions in civil actions
25 in courts of this State, and to that end compel the attendance
26 of witnesses and the production of books, papers, records, or
27 memoranda.

28 (Source: P.A. 93-563, eff. 1-1-04.)

29 (210 ILCS 85/10.9 new)

30 Sec. 10.9. Overtime for nurses and unlicensed workers
31 prohibited.

32 (a) In this Section:

33 "Nurse" means any advanced practice nurse, registered
34 professional nurse, or licensed practical nurse, as defined in
35 the Nursing and Advanced Practice Nursing Act, who receives an

1 hourly wage and has direct responsibility to oversee or carry
2 out nursing care.

3 "Unlicensed worker" means any unlicensed hospital employee
4 who, under the delegation and supervision of a registered
5 professional nurse, assists in the nursing plan of care and
6 receives an hourly wage.

7 "Overtime" means (i) the hours worked in excess of an
8 agreed-upon, predetermined, regularly scheduled shift, not to
9 exceed 8 hours in any 24-hour period, or (ii) work in excess of
10 40 hours in 7 consecutive days. In hospitals where collective
11 bargaining agreements are in place, the collective bargaining
12 agreement shall prevail as to what constitutes "overtime" for
13 nurses and unlicensed workers.

14 "Unforeseen emergent situation" means any declared
15 national, State, or municipal disaster or other catastrophic
16 event, or any implementation of a hospital's disaster plan,
17 that will substantially affect or increase the need for health
18 care services. The term does not include using overtime to fill
19 vacancies due to short-staffing.

20 (b) A nurse or unlicensed worker may not be required to
21 work overtime except in the case of an unforeseen emergent
22 situation. A nurse or unlicensed worker may not be disciplined,
23 discriminated against, dismissed, discharged, or retaliated
24 against or made subject to any other adverse employment
25 decision for refusing to work overtime.

26 A nurse may not be required to work more than 12
27 consecutive hours in a 24-hour period.

28 Hospital work schedules for nurses and unlicensed workers
29 must be posted at least one month in advance. Such work
30 schedules may not be changed after posting except by mutual
31 agreement between nurses or unlicensed workers and the
32 hospital.

33 When a nurse or unlicensed worker works 12 consecutive
34 hours, the nurse or unlicensed worker must be allowed at least
35 8 consecutive hours of off-duty time immediately following the
36 completion of the shift.

1 (c) Any employee of a hospital that is subject to this Act
2 may file a complaint against the hospital with the Department
3 of Public Health regarding an alleged violation of this
4 Section. A hospital may be in violation of this Section
5 whenever there is evidence that a nurse or unlicensed worker is
6 forced to work overtime in any case that does not involve an
7 unforeseen emergent circumstance. The complaint must be filed
8 within 30 days following the occurrence of the incident giving
9 rise to the alleged violation.

10 The Department must forward a written notice of the alleged
11 violation to the hospital in question within 3 business days
12 after the complaint is filed. Each such notice of an alleged
13 violation must specify the nature of the violation and the
14 statutory provision alleged to have been violated. The notice
15 must inform the hospital of any action the Department may take
16 under this Section. The notice also must inform the hospital of
17 its right to a hearing under Section 7.

18 After the hearing, if the Director finds, based on the
19 evidence introduced at the hearing, that the hospital violated
20 this Section, the Director may impose a civil penalty as
21 follows:

22 (1) The penalty for a first violation of this Section
23 shall be a reprimand.

24 (2) The penalty for a second violation of this Section
25 shall be a reprimand and a monetary penalty not to exceed
26 \$500.

27 (3) The penalty for a third or subsequent violation of
28 this Section shall be a monetary penalty of not less than
29 \$2,500 and not more than \$5,000.

30 To be counted as a second or subsequent violation under
31 this Section, a violation must occur within 12 months after the
32 immediately preceding violation.

33 The Attorney General may bring an action in the circuit
34 court to enforce the collection of a monetary penalty imposed
35 under this Section.

36 All monetary penalties paid pursuant to this Section shall

1 be paid to the Department of Public Health and shall be used by
2 the Department for the purpose of funding scholarships awarded
3 under the Nursing Education Scholarship Law.

4 (d) Every hospital must post a summary of this Section
5 approved by the Director of Labor in a conspicuous and
6 accessible place in or about the hospital premises wherever any
7 person subject to this Section employed. The Department of
8 Labor must furnish copies of the summary to hospitals on
9 request, without charge.

10 Section 10. The Hospital Report Card Act is amended by
11 changing Section 25 as follows:

12 (210 ILCS 86/25)

13 Sec. 25. Hospital reports.

14 (a) Individual hospitals shall prepare a quarterly report
15 including all of the following:

16 (1) Nursing hours per patient day, average daily
17 census, and average daily hours worked for each clinical
18 service area.

19 (2) Nosocomial infection rates for the facility for the
20 specific clinical procedures determined by the Department
21 by rule under the following categories:

22 (A) Class I surgical site infection.

23 (B) Ventilator-associated pneumonia.

24 (C) Central line-related bloodstream infections.

25 (3) Violations of Section 10.9 of the Hospital
26 Licensing Act, as determined by the Director of Public
27 Health.

28 The Department shall only disclose Illinois hospital
29 infection rate data according to the current benchmarks of the
30 Centers for Disease Control's National Nosocomial Infection
31 Surveillance Program.

32 (b) Individual hospitals shall prepare annual reports
33 including vacancy and turnover rates for licensed nurses per
34 clinical service area.

1 (c) None of the information the Department discloses to the
2 public may be made available in any form or fashion unless the
3 information has been reviewed, adjusted, and validated
4 according to the following process:

5 (1) The Department shall organize an advisory
6 committee, including representatives from the Department,
7 public and private hospitals, direct care nursing staff,
8 physicians, academic researchers, consumers, health
9 insurance companies, organized labor, and organizations
10 representing hospitals and physicians. The advisory
11 committee must be meaningfully involved in the development
12 of all aspects of the Department's methodology for
13 collecting, analyzing, and disclosing the information
14 collected under this Act, including collection methods,
15 formatting, and methods and means for release and
16 dissemination.

17 (2) The entire methodology for collecting and
18 analyzing the data shall be disclosed to all relevant
19 organizations and to all hospitals that are the subject of
20 any information to be made available to the public before
21 any public disclosure of such information.

22 (3) Data collection and analytical methodologies shall
23 be used that meet accepted standards of validity and
24 reliability before any information is made available to the
25 public.

26 (4) The limitations of the data sources and analytic
27 methodologies used to develop comparative hospital
28 information shall be clearly identified and acknowledged,
29 including but not limited to the appropriate and
30 inappropriate uses of the data.

31 (5) To the greatest extent possible, comparative
32 hospital information initiatives shall use standard-based
33 norms derived from widely accepted provider-developed
34 practice guidelines.

35 (6) Comparative hospital information and other
36 information that the Department has compiled regarding

1 hospitals shall be shared with the hospitals under review
2 prior to public dissemination of such information and these
3 hospitals have 30 days to make corrections and to add
4 helpful explanatory comments about the information before
5 the publication.

6 (7) Comparisons among hospitals shall adjust for
7 patient case mix and other relevant risk factors and
8 control for provider peer groups, when appropriate.

9 (8) Effective safeguards to protect against the
10 unauthorized use or disclosure of hospital information
11 shall be developed and implemented.

12 (9) Effective safeguards to protect against the
13 dissemination of inconsistent, incomplete, invalid,
14 inaccurate, or subjective hospital data shall be developed
15 and implemented.

16 (10) The quality and accuracy of hospital information
17 reported under this Act and its data collection, analysis,
18 and dissemination methodologies shall be evaluated
19 regularly.

20 (11) Only the most basic identifying information from
21 mandatory reports shall be used, and information
22 identifying a patient, employee, or licensed professional
23 shall not be released. None of the information the
24 Department discloses to the public under this Act may be
25 used to establish a standard of care in a private civil
26 action.

27 (d) Quarterly reports shall be submitted, in a format set
28 forth in rules adopted by the Department, to the Department by
29 April 30, July 31, October 31, and January 31 each year for the
30 previous quarter. Data in quarterly reports must cover a period
31 ending not earlier than one month prior to submission of the
32 report. Annual reports shall be submitted by December 31 in a
33 format set forth in rules adopted by the Department to the
34 Department. All reports shall be made available to the public
35 on-site and through the Department.

36 (e) If the hospital is a division or subsidiary of another

1 entity that owns or operates other hospitals or related
2 organizations, the annual public disclosure report shall be for
3 the specific division or subsidiary and not for the other
4 entity.

5 (f) The Department shall disclose information under this
6 Section in accordance with provisions for inspection and
7 copying of public records required by the Freedom of
8 Information Act provided that such information satisfies the
9 provisions of subsection (c) of this Section.

10 (g) Notwithstanding any other provision of law, under no
11 circumstances shall the Department disclose information
12 obtained from a hospital that is confidential under Part 21 of
13 Article 8 of the Code of Civil Procedure.

14 (h) No hospital report or Department disclosure may contain
15 information identifying a patient, employee, or licensed
16 professional.

17 (Source: P.A. 93-563, eff. 1-1-04.)

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