

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

Introduced

Senate Bill 519

BY SENATORS OJEDA, FACEMIRE, JEFFRIES, ROMANO,

RUCKER AND STOLLINGS

[Introduced March 6, 2017; referred
to the Committee on the Judiciary]

1 A BILL to amend and reenact §21-5F-1, §21-5F-2, §21-5F-3 and §21-5F-4 of the Code of West
2 Virginia, 1931, as amended, all relating to amending the West Virginia Nurse Overtime
3 and Patient Safety Act to include nurses employed in nursing homes as well as those
4 employed in hospitals; establishing limits on hours such nurses may be mandated to work
5 by their employers; and establishing enforcement offenses, penalties and a private cause
6 of action for violations of the act.

Be it enacted by the Legislature of West Virginia:

1 That §21-5F-1, §21-5F-2, §21-5F-3 and §21-5F-4 of the Code of West Virginia, 1931, as
2 amended, be amended and reenacted, all to read as follows:

ARTICLE 5F. NURSE OVERTIME AND PATIENT SAFETY ACT.

§21-5F-1. Legislative findings and purpose.

1 The Legislature finds and declares that:

2 (1) It is essential that qualified registered nurses and other licensed health care workers
3 providing direct patient care be available to meet the needs of patients;

4 (2) Quality patient care is jeopardized by nurses that work unnecessarily long hours in
5 hospitals and nursing homes;

6 (3) Health care workers, especially nurses, are leaving their profession because of
7 workplace stresses, long work hours and depreciation of their essential role in the delivery of
8 quality, direct patient care;

9 (4) It is necessary to safeguard the efficiency, health and general well-being of health care
10 workers in hospitals and nursing homes, as well as the health and general well-being of the
11 persons who use their services;

12 (5) It is further necessary that health care workers be aware of their rights, duties and
13 remedies with regard to hours worked and patient safety; and

14 (6) Hospitals and nursing homes should provide adequate safe nursing staffing without
15 the use of mandatory overtime.

§21-5F-2. Definitions.

For the purposes of this article:

(1) "Hospital" means a facility licensed under the provisions of article five-b, chapter sixteen of this code, but does not include hospitals operated by state or federal agencies.

(2) "Nursing home" means a facility licensed under the provisions of article five-c chapter sixteen of this code, but does not include nursing homes operated by state or federal agencies.

~~(2)~~ (3) "Nurse" means a certified or licensed practical nurse or a registered nurse who is providing nursing services and is involved in direct patient care activities or clinical services, but does not include certified nurse anesthetists. Nurse managers are included with respect to their delivery of in-hospital patient care, but this is in no way intended to impact on their 24-hour management responsibility for a unit, area or service.

~~(3)~~ (4) "Overtime" means the hours worked in excess of an agreed upon, predetermined, regularly scheduled shift or the hours worked in excess of forty per week.

~~(4)~~ (5) "Taking action against" means discharging; disciplining; threatening; reporting to the board of nursing; discriminating against; or penalizing regarding compensation, terms, conditions, location or privileges of employment.

~~(5)~~ (6) "Unforeseen emergent situation" means an unusual, unpredictable or unforeseen circumstance such as, but not limited to, an act of terrorism, a disease outbreak, adverse weather conditions or natural disasters. An unforeseen emergent situation does not include situations in which the hospital and nursing home has reasonable knowledge of increased patient volume or decreased staffing, including, but not limited to, scheduled vacations and scheduled health care worker medical leave.

(7) "Employer" means any hospital licensed under the provisions of article five-b, chapter sixteen of this code, any nursing home licensed under the provisions of article five-b, chapter sixteen of this code and any for-profit corporation, nonprofit corporation, limited liability company, holding company or any other type of business organization holding ownership or control of any

26 aforementioned facility.

§21-5F-3. Hospital and nursing home overtime limitations and requirements.

27 (a) Except as provided in subsections (b), (c), (d), (e) and (f) of this section, a hospital or
28 nursing home is prohibited from mandating a nurse, directly or through coercion, to accept an
29 assignment of overtime and is prohibited from taking action against a nurse solely on the grounds
30 that the nurse refuses to accept an assignment of overtime at the facility if the nurse declines to
31 work additional hours because doing so may, in the nurse's judgment, jeopardize patient or
32 employee safety.

33 (b) Notwithstanding subsections (a) and (g) of this section, a nurse may be scheduled for
34 duty or mandated to continue on duty in overtime status in an unforeseen emergent situation that
35 jeopardizes patient safety.

36 (c) Subsections (a) and (g) of this section do not apply when a nurse may be required to
37 fulfill prescheduled on-call time, but nothing in this article shall be construed to permit an employer
38 to use on-call time as a substitute for mandatory overtime.

39 (d) Notwithstanding subsections (a) and (g) of this section, a nurse may be required to
40 work overtime to complete a single patient care procedure already in progress, but nothing in this
41 article shall be construed to permit an employer to use a staffing pattern as a means to require a
42 nurse to complete a procedure as a substitute for mandatory overtime.

43 (e) Subsection (a) of this section does not apply when a collective bargaining agreement
44 is in place between nurses and the hospital which is intended to substitute for the provisions of
45 this article by incorporating a procedure for the hospital or nursing home to require overtime.

46 (f) Subsection (a) of this section does not apply to voluntary overtime.

47 (g) In the interest of patient safety, any nurse who works twelve or more consecutive hours,
48 as permitted by this section, shall be allowed at least eight consecutive hours of off-duty time
49 immediately following the completion of the shift. Except as provided in subsections (b), (c) and
50 (d) of this section, no nurse shall work more than sixteen hours in a twenty-four hour period. The

nurse is responsible for informing the employer hospital of other employment experience during the twenty-four hour period in question if this provision is to be invoked. No nurse shall be mandated to work more than one overtime shift during any one forty hour work week. To the extent that an on-call nurse has actually worked sixteen hours in a hospital or nursing home, efforts shall be made by the hospital or nursing home to find a replacement nurse to work.

Each hospital or nursing home shall designate an anonymous process for patients and nurses to make staffing complaints related to patient safety.

(h) Each hospital or nursing home shall post, in one or more conspicuous place or places where notices to employee nurses are customarily posted, a notice in a form approved by the commissioner of the Department of Labor setting forth a nurse's rights under this article.

§21-5F-4. Enforcement; offenses and penalties.

(a) Pursuant to the powers set forth in article one of this chapter, the Commissioner of Labor is charged with the enforcement of this article. The commissioner shall propose legislative and procedural rules in accordance with the provisions of article three, chapter twenty-nine-a of this code to establish procedures for enforcement of this article. These rules shall include, but are not limited to, provisions to protect due process requirements, a hearings procedure, an appeals procedure, and a notification procedure, including any signs that must be posted by the facility.

(b) Any complaint must be filed with the commissioner regarding an alleged violation of the provisions of this article must be made within thirty days following the occurrence of the incident giving rise to the alleged violation. ~~The commissioner shall keep each complaint anonymous until the commissioner finds that the complaint has merit~~ The commissioner shall establish a process for notifying a hospital or nursing home of a complaint.

(c) The administrative penalty for the first violation of this article is a ~~reprimand~~ fine of \$500.

(d) The administrative penalty for the second offense of this article is a ~~reprimand and a fine not to exceed \$500~~ of \$2,500.

(e) The administrative penalty for the third and subsequent offenses is a fine of ~~not less than \$2,500 and not more than \$5,000~~ for each violation.

~~(f) To be eligible to be charged of a second offense or third offense under this section, the subsequent offense must occur within twelve months of the prior offense~~

~~(g)~~ (f) (1) All moneys paid as administrative penalties pursuant to this section shall be deposited into the Health Care Cost Review Fund provided by section eight, article twenty-nine-b, chapter sixteen of this code.

(2) In addition to other purposes for which funds may be expended from the Health Care Cost Review Fund, the West Virginia Health Care Authority shall expend moneys from the fund, in amounts up to but not exceeding amounts received pursuant to subdivision (1) of this subsection, for the following activities in this state:

(A) Establishment of scholarships in medical schools;

(B) Establishment of scholarships for nurses training;

(C) Establishment of scholarships in the public health field;

(D) Grants to finance research in the field of drug addiction and development of cures therefor;

(E) Grants to public institutions devoted to the care and treatment of narcotic addicts; and

(F) Grants for public health research, education and care.

(g) Any nurse who has suffered retaliation from an employer as a result of the violation of this article shall have a private cause of action against the employer. Any such plaintiff who prevails in a private cause of action under this article may be awarded compensatory damages, punitive damages and an award of attorney's fees.

NOTE: The purpose of this bill is to amend the West Virginia Nurse Overtime and Patient Safety Act to include nurses employed in nursing homes as well as those employed in hospitals, establishing limits on hours such nurses may be mandated to work by their employers and establishing enforcement offenses, penalties and a private cause of action

for violations of the Act.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.