

# **WEST VIRGINIA LEGISLATURE**

**2023 REGULAR SESSION**

**Introduced**

**House Bill 3422**

By Delegate Dittman

[Introduced February 13, 2023; Referred to the  
Committee on Health and Human Resources]

1 A BILL to amend and reenact §21-5F-2 and §21-5F-3 of the Code of West Virginia, 1931, as  
2 amended, all relating to adding nursing homes to the nurses' overtime limitation.

*Be it enacted by the Legislature of West Virginia:*

**ARTICLE 5F. NURSE OVERTIME AND PATIENT SAFETY ACT.**

**§21-5F-2. Definitions.**

1 For the purposes of this article:

2 (1) "Hospital" means a facility licensed under the provisions of §16-5B-1 *et seq.* of this  
3 code, but does not include hospitals operated by state or federal agencies.

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

9 "Nursing Home" means a facility licensed under the provisions of §16-5C-1 *et seq.* of this  
10 code.

11 (3) "Overtime" means the hours worked in excess of an agreed upon, predetermined,  
12 regularly scheduled shift.

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

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

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

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

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

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

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

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

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

21 (g) In the interest of patient safety, any nurse who works twelve or more consecutive hours,  
22 as permitted by this section, shall be allowed at least eight consecutive hours of off-duty time  
23 immediately following the completion of the shift. Except as provided in subsections (b), (c), and  
24 (d) of this section, no nurse shall work more than 16 hours in a 24-hour period. The nurse is  
25 responsible for informing the employer hospital or nursing home of other employment experience

26 during the 24 hour period in question if this provision is to be invoked. To the extent that an on-call  
27 nurse has actually worked 16 hours in a hospital, efforts shall be made by the hospital or nursing  
28 home to find a replacement nurse to work.

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

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

NOTE: The purpose of this bill is to add nurses working in a nursing home to the overtime limitation.

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