

Department of Legislative Services
Maryland General Assembly
2002 Session

FISCAL NOTE
Revised

House Bill 42 (Delegate Nathan-Pulliam, *et al.*)
Economic Matters

Finance

Labor and Employment - Nurses - Involuntary Overtime Prohibition

This bill prohibits an employer from requiring a nurse to work more than the regularly scheduled hours according to a predetermined work schedule.

Fiscal Summary

State Effect: The bill would not materially affect governmental finances.

Local Effect: None.

Small Business Effect: Minimal. Small businesses that employ nurses could incur additional expenses from hiring extra staff to ensure proper coverage.

Analysis

Bill Summary: A nurse may be required to work overtime if: (1) the work is a consequence of an emergency situation that could not have been reasonably anticipated; (2) the emergency situation is nonrecurring and is not caused or aggravated by the employer's inattention or lack of reasonable contingency planning; (3) the employer has exhausted all good faith, reasonable attempts to obtain voluntary workers during the succeeding shifts; (4) the nurse has critical skills and expertise that are required for the work; (5) the standard of care for a patient assignment required continuity of care through completion of a case, treatment, or procedure; and (6) the employer has informed the nurse of the basis for the employer's direction and that basis satisfies the requirements for mandatory overtime.

In addition, a nurse may be required to work overtime if a condition of employment includes on-call rotation or the nurse works in community-based care.

A nurse cannot be considered responsible for the care of a patient beyond the nurse's predetermined work schedule if the nurse has notified another nurse of the patient's status and has transferred responsibility for the patient's care to another appropriate individual.

Notwithstanding the bill's limitations on overtime, a nurse may voluntarily agree to work overtime hours.

Current Law: In general, there are no prohibitions on required overtime. State wage and hour laws specify appropriate overtime pay for certain employees based on certain workweeks.

The federal Fair Labor Standards Act (FLSA) sets minimum wage, overtime pay, equal pay, record-keeping, and child labor standards for employers who are covered by the Act. The FLSA does not limit the number of hours that an employee can be required to work, either daily or weekly. FLSA requires that overtime pay must be paid at specified rates depending on a particular employee's classification.

Background: It has been reported that a statewide shortage of nurses has led to an increase in the amount of overtime performed by nurses. Nationwide estimates indicate that within 20 years, the supply of registered nurses will be 20% lower than required.

Chapters 257 and 258 of 2000 (SB 311/HB 363) established a commission to study the State's nursing shortage. The commission has already developed several recommendations to attract more nurses to the State. In addition, the commission has examined workplace issues, including an examination of work hours and workloads, and how these issues impact the State's ability to attract and retain nurses. The commission's Workplace Subcommittee recently developed a concept paper on work hours and overtime, which addresses four main issues: (1) nurses or nursing assistants should not be compelled to work in excess of predetermined routine scheduled hours, except in an emergency or catastrophic event; (2) "full time" does not exceed 40 hours; (3) "part time" is any time less than 40 hours that is not full time; and (4) it is a professional responsibility of nurses to accept or decline overtime assignments based on their self-assessment of ability to provide safe care.

Additional Information

Prior Introductions: Similar bills, HB 889 and SB 732, were introduced in the 2001 session. HB 889 received an unfavorable report by the House Economic Matters Committee and SB 732 received an unfavorable report by the Senate Finance Committee.

Cross File: None.

Information Source(s): Department of Health and Mental Hygiene (Board of Nursing, Maryland Health Care Commission); Department of Labor, Licensing, and Regulation; Department of Legislative Services

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