S T A T E O F N E W Y O R K

5016--A

2009-2010 Regular Sessions

I N S E N A T E

April 27, 2009

Introduced by Sens. STACHOWSKI, ADDABBO -- read twice and ordered printed, and when printed to be committed to the Committee on Labor -- recommitted to the Committee on Labor in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the labor law and the education law, in relation to the hours worked by nurses

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Section 167 of the labor law, as added by chapter 493 of the laws of 2008, is amended to read as follows:

S 167. Restrictions on consecutive hours of work for nurses. 1. When used in this section:

a. "Health care employer" shall mean any individual, partnership, association, corporation, limited liability company or any person or group of persons acting directly or indirectly on behalf of or in the interest of the employer, which provides health care services (i) in a facility licensed or operated pursuant to article twenty-eight AND ARTICLE THIRTY-SIX of the public health law, including any facility operated by the state, a political subdivision or a public corporation as defined by section sixty-six of the general construction law, or (ii) in a facility operated by the state, a political subdivision or a public corporation as defined by section sixty-six of the general construction law, operated or licensed pursuant to the mental hygiene law, the education law or the correction law.

b. "Nurse" shall mean a registered professional nurse or a licensed practical nurse as defined by article one hundred thirty-nine of the education law who provides direct patient care.

c. "Regularly scheduled work hours", including REGULARLY SCHEDULED HOME CARE VISITS, pre-scheduled on-call time and the time spent for the purpose of communicating shift reports regarding patient status necessary to ensure patient safety, shall mean those hours AND HOME CARE VISITS a nurse has agreed to work and is normally scheduled to work pursuant to the budgeted hours AND HOME CARE VISITS allocated to the

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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nurse's position by the health care employer; and if no such allocation system exists, some other measure generally used by the health care employer to determine when an employee is minimally supposed to work, consistent with the collective bargaining agreement, if any. Nothing in this section shall be construed to permit an employer to use on-call time as a substitute for mandatory overtime.

2. a. Notwithstanding any other provision of law no health care employer shall require a nurse to work more than that nurse's regularly scheduled work hours OR HOME CARE VISITS, except pursuant to subdivision three of this section.

b. Nothing in this section shall prohibit a nurse from voluntarily working overtime.

3. The limitations provided for in this section shall not apply in the case of:

a. a health care disaster, such as a natural or other type of disaster that increases the need for health care personnel, unexpectedly affecting the county in which the nurse is employed or in a contiguous county; or

b. a federal, state or county declaration of emergency in effect in the county in which the nurse is employed or in a contiguous county; or

c. where a health care employer determines there is an emergency, necessary to provide safe patient care, in which case the health care provider shall, before requiring an on-duty employee to remain, make a good faith effort to have overtime covered on a voluntary basis, including, but not limited to, calling per diems, agency nurses, assigning floats, or requesting an additional day of work from off-duty employees, to the extent such staffing options exist. For the purposes of this paragraph, "emergency", including an unanticipated staffing emergency, is defined as an unforeseen event that could not be prudently planned for by an employer and does not regularly occur; or

d. an ongoing medical or surgical procedure in which the nurse is actively engaged and whose continued presence through the completion of the procedure is needed to ensure the health and safety of the patient.

3-A. IN THE CASE OF A NURSE EMPLOYED BY AN EMPLOYER LICENSED PURSUANT TO ARTICLE THIRTY-SIX OF THE PUBLIC HEALTH LAW, THE TERM 'EMERGENCY' SHALL ALSO INCLUDE A SITUATION IN WHICH UNFORESEEN EVENTS MAKE IT NECESSARY FOR AN EMPLOYER TO REQUIRE A NURSE TO COMPLETE REGULARLY SCHEDULED HOME CARE VISITS IN CIRCUMSTANCES WHERE THE LOCATION OF THE PRE-SCHEDULED VISITS AND LACK OF OTHER STAFFING OPTIONS FOR COVERAGE MAKE IT IMPRACTICAL TO RESCHEDULE THE VISIT OR TO PROVIDE ALTERNATIVE COVERAGE.

4. The provisions of this section are intended as a remedial measure to protect the public health and the quality of patient care, and shall not be construed to diminish or waive any rights of any nurse pursuant to any other law, regulation, or collective bargaining agreement.

S 2. Section 6510-e of the education law, as added by chapter 493 of the laws of 2008, is amended to read as follows:

S 6510-e. Nurses' refusal of overtime work. The refusal of a licensed practical nurse or a registered professional nurse to work beyond said nurse's regularly scheduled HOME CARE VISITS OR hours of work shall not solely constitute patient abandonment or neglect except under the circumstances provided for under subdivision three of section one hundred sixty-seven of the labor law.

S 3. This act shall take effect on the ninetieth day after it shall have become a law.