§ 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 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, the correction law, or section five hundred four of the executive 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 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 a nurse has agreed to work and is normally scheduled to work pursuant to the budgeted hours allocated to the 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, 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. 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.

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.

5. Oversight of the use of mandatory overtime during an emergency. a. The commissioner, in consultation with the commissioner of health, shall have the authority to promulgate any regulations necessary to carry out the provisions of this section.

b. Any health care employer that utilizes an exception to the limitation on mandatory overtime provisions as provided for in

subdivision three of this section shall notify the department when such provisions are in use. If a health care employer has utilized the mandatory overtime provisions as provided for in this section for fifteen days or more in a given month, the employer shall report to the department and the department of health: (i) the number of days mandatory overtime was required; (ii) the number of employees that were required to remain on duty in overtime status; and (iii) the dates and times mandatory overtime was required. If a health care employer has utilized mandatory overtime provisions under this section for forty-five days or more in any consecutive three month period the health care employer shall file with the department and the department of health an explanation for why mandatory overtime was required and provide an estimate of when the employer intends to cease the use of mandatory overtime.

c. The department shall establish an enforcement officer to oversee investigations into any complaints of violations of this section.

d. The health care employer shall, before utilizing mandatory overtime provisions and 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. Failure to engage in a good faith effort pursuant to this section shall be a violation. Any employee who has been required to work in violation of this section may file a complaint with the enforcement officer alleging such violation. Any complaint made pursuant to this paragraph must be made in good faith.

6. Upon receipt of a complaint pursuant to subdivision five of this section, the enforcement officer may cause such investigation to be made, in consultation with the department of health and shall notify the employer. If, after investigation, the commissioner determines that an employer has violated this section, the commissioner shall issue to the employer an order directing compliance therewith, which shall describe particularly the alleged violation. A copy of such order shall be provided to any employee who has filed a complaint and to his or her

authorized representative. The commissioner may assess the employer a civil penalty in an amount not to exceed one thousand dollars for a first violation, two thousand dollars for a second violation if within twelve months, or three thousand dollars for a third or subsequent violation of this section if within twelve months; provided, however, that the department may assess an employer a civil penalty of not more than five hundred dollars for any violation of paragraph b of subdivision five of this section.

7. The department shall develop and make available on its website a poster containing information for employees on filing a complaint pursuant to this section. Every health care employer shall display such poster in a conspicuous location accessible to employees in the workplace.