



## **Senate Hearing Testimony on SB 722 (2004 Health Care Worker and Patient Protection Act)**

### **Introduction**

Good morning, my name is Marilyn Hostetter. I am a registered nurse and serve as the Coordinator of the Nurse Alliance of Pennsylvania, an affiliate of Pennsylvania's Health Care Union, District 1199P of the Service Employees International Union (SEIU). I would like to begin by thanking Chairman Greenleaf and the members of the Senate Judiciary Committee for convening this meeting and for affording me the opportunity to testify before you.

District 1199P/SEIU is the largest health care union in Pennsylvania, representing 20,000 registered and licensed practical nurses, technicians, nursing assistants, and other health care workers employed in acute care hospitals, nursing homes, and state and county operated facilities. Eliminating the practice of mandatory overtime (MOT), which is unsafe for patients and frontline caregivers, is a major priority for all health care workers, whether they work in a small community hospital, a trauma center, a nursing home, or a state correctional institution.

### **The Scope of the Problem**

Long work hours and mandatory overtime for health care workers are growing problems in Pennsylvania, and legislative action in this area is overdue. According to an independent poll conducted in 2001, Pennsylvania nurses work an average of 7 and 2/3 weeks of overtime per year.<sup>1</sup> Ninety-seven percent of hospitals report using overtime to staff their facilities on a regular basis.

The recent report by the Pennsylvania Department of Health's State Health Improvement Plan, combining data from surveys taken in conjunction with RN licensure renewals in April and October of 2002 and 2003, found that 12.6% or about 1 in 8 nurses employed in health care reported working mandatory overtime in the previous two weeks. The incidence of mandatory overtime was even higher among nurses at state inpatient facilities (41.8%), military and federal facilities (23.2%) and acute care hospitals (15% or nearly 1 in 6 nurses).<sup>2</sup>

RNs at one acute care hospital in western Pennsylvania researched how their facility is using overtime. Some of the results they found were:

- In one week, nurses on one floor were mandated a total of 224 hours. That's an average of 4 nurses a day.
- During a 14-day period on one floor, nurses were mandated 213 hours, approximately 2 shifts per day.

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<sup>1</sup> SEIU poll of Pennsylvania acute care hospital nurses conducted by the Feldman Group, 2001.

<sup>2</sup> Pennsylvania Department of Health State Health Improvement Plan, *Special Report on the Characteristics of the Registered Nurse Population in Pennsylvania*, April 2004, p. 52.

- In one week, there were 16 RN shifts short on one floor. Six of them were filled using mandatory overtime.<sup>3</sup>

Although survey data regarding mandatory overtime is less extensive among non-nurses, our experience representing 29 acute care hospitals and nearly 100 long term care facilities in Pennsylvania tells us that forced overtime is a major issue in many non-nurse job classifications, including technical employees in hospitals and nursing assistants in hospitals and nursing homes. Many facilities report high turnover and vacancy rates in these job classifications. Staff turnover in Pennsylvania nursing homes is an astonishing 50.4%,<sup>4</sup> and 90% of nursing homes report using overtime to regularly staff their facilities.<sup>5</sup> Mandatory overtime consistently appears as a top priority for direct care workers in collective bargaining negotiations in the long term care industry.

### **Mandatory Overtime Puts Patients and Caregivers at Risk**

For years, studies have documented that long work hours in health care facilities lower the quality of care and put patients at risk of injury or death. A 1992 study in the *American Journal of Public Health* reported that nurses who worked variable schedules (including mandatory overtime) were twice as likely to report errors or accidents related to sleepiness.<sup>6</sup> In its groundbreaking report in 2000 entitled *To Err is Human*, the Institute of Medicine estimated that between 44,000 and 98,000 patients die in hospitals each year as a result of medical errors.<sup>7</sup> In a follow up study issued last year, the IOM reported that “the number of hours worked has been identified as a contributing factor to the commission of errors by nurses,” and cited one study that “found that shift durations of greater than 12 hours were significantly associated with increased errors among nurses.”<sup>8</sup> Two other studies have demonstrated that overtime is linked to infection outbreaks in hospitals.<sup>9</sup>

For other occupations where public safety is affected by excessive hours of work, such as pilots and air traffic controllers, mandatory overtime is restricted by law. No such restrictions exist in Pennsylvania for the health care professions. Pennsylvania allows hospitals, nursing homes, and other health care facilities to force caregivers to work 12- and 16-hour shifts (or even longer) without rest.

The risk to caregivers and others from mandatory overtime is no less severe. Caregivers cannot plan for MOT and may not be sufficiently well rested to work beyond their normal shift.

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<sup>3</sup> District 1199P/SEIU, *Condition Critical*, 2001.

<sup>4</sup> American Health Care Association, *2002 Survey of Nursing Staff Vacancy and Turnover in Nursing Homes*, February 2003.

<sup>5</sup> Report to Congress, *The Future Supply of Long-Term Care Workers in Relation to the Aging Baby Boom Generation*, May 2003.

<sup>6</sup> “Rotating shift work, sleep, and accidents related to sleepiness in hospital nurses,” DR Gold, S Rogacz, N Bock, TD Tosteson, TM Baum, FE Speizer, and CA Czeisler. *American Journal of Public Health* 1992 82, pp. 1011-1014.

<sup>7</sup> Institute of Medicine, *To Err Is Human: Building a Safer Health System*. Linda T. Kohn, Janet M. Corrigan, and Molla S. Donaldson, editors. Washington, 2000, p. 26.

<sup>8</sup> Institute of Medicine, *Keeping Patients Safe: Transforming the Work Environment of Nurses*, Ann Page, editor. November 2003, pp. 43-44.

<sup>9</sup> Studies by Arnow, et al., and Russell, cited in Economic Policy Institute, “Time after Time: Mandatory overtime in the U.S. economy,” Lonnie Golden and Helene Jorgensen, January 2002, p. 9.

Studies have shown that nurses working overtime are twice as likely to fall asleep while driving to or from work, placing themselves and others on the road in danger.<sup>10</sup>

## **Mandatory Overtime Is Driving Caregivers Out of Health Care**

Enacting legislation prohibiting mandatory overtime except in emergencies is critical in order to retain and recruit health care workers and help solve the health care staffing crisis. Pennsylvania is facing a severe shortage of health care professionals. Hospitals, nursing homes and state facilities (including prisons, state mental institutions and others) all report high vacancy rates for nurses, aides, techs and other staff. The RN vacancy rate in hospitals increased from 6% in 1994 to 10% in 2000. Hospital vacancy rates for licensed practical nurses and nursing assistants also increased during this period, to 8.6% and 9.9%, respectively.<sup>11</sup> Unless effective counter measures are taken, the shortage of nurses in Pennsylvania is projected by the Federal government to reach 14 percent, or 7,000 RNs by 2010, and 30 percent, or 40,000 RNs by 2020. At the same time, demands for health care services are expected to increase dramatically as baby boomers continue to age, an issue of particular importance for Pennsylvania, which already ranks second among all U.S. states in terms of the percentage of the population over age 65. Following hearings held in 2001, the Pennsylvania House Professional Licensure Committee concluded that critical shortages of health care workers “threaten the very fabric of the state’s health care system.”<sup>12</sup>

A closer analysis reveals that there is not so much a “shortage” of nurses and other health care professionals as a shortage of caregivers willing to work at the bedside under current working conditions. Frontline health care workers today are working harder and longer, caring for patients that are sicker than ever (thanks to managed care hospital admission criteria). As working conditions have deteriorated, health care professionals have voted with their feet by leaving the bedside. Nearly 1 in 4 RNs in Pennsylvania have already left nursing, the highest dropout rate of any state in the country.<sup>13</sup> According to the recent DoH licensure renewal survey, nearly half of RNs employed in health care in Pennsylvania plan to leave nursing in the next ten years, and 21% anticipate leaving the field nursing in the next five years. In a very telling statistic, what the report describes as a “surprising portion” of young nurses are planning to leave – 27.6% of nurses under age 35 anticipate getting out of the field within the next decade.<sup>14</sup> The survey’s licensure renewal statistics tell a similarly striking story of young nurses burning out and leaving the profession: a higher percentage of nurses aged 25-29 and 30-34 failed to renew their licenses (16.6% and 14.3% respectively) than in any other age groups except nurses 65 and older.<sup>15</sup>

There is no question that aggressive recruitment is one key to solving the staffing crisis. But programs to attract more people to nursing and other health care training programs have already been heavily invested in by the federal government, private health care providers and the

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<sup>10</sup> Gold, Rogacz, et al., pp. 1011-1014

<sup>11</sup> Hospital and Healthsystem Association of Pennsylvania, *Pennsylvania Nurses: Meeting the Demand for Nursing Care in the 21st Century*, 2001, p. 26.

<sup>12</sup> Legislative Budget and Finance Committee of the Pennsylvania General Assembly, *Pennsylvania’s Response to Current and Projected Shortages in the Nursing Workforce*, April 2004, pp. S-1 and S-4.

<sup>13</sup> Health Resources and Services Administration, *National Sample Survey of Registered Nurses*, cited in Legislative Budget and Finance Committee, *Pennsylvania’s Response*, , p. 18.

<sup>14</sup> PA Department of Health, *Special Report*, p. 63.

<sup>15</sup> PA Department of Health, *Special Report*, p. 72.

Commonwealth. The statistics described above underscore the fact that no recruitment initiatives will succeed unless we also focus on retention and create a safe, rewarding work environment that stops the revolving door of frontline health care workers leaving the field.

The recent DoH survey reveals job dissatisfaction as a key factor in stymieing efforts to retain nurses. Two-thirds of Pennsylvania nurses who plan to leave health care in the next 6 to 10 years report that they are dissatisfied with their jobs.<sup>16</sup> And the DoH survey documents a strong, direct link between job dissatisfaction and mandatory overtime among frontline caregivers in Pennsylvania. The survey found that 25.7%, or 1 in 4, nurses who reported mandatory overtime also said they were dissatisfied with their jobs, nearly double the job dissatisfaction rate among nurses who did not report mandatory overtime.<sup>17</sup>

### **Mandatory Overtime Affects All Caregivers**

It is critical that legislation to prohibit mandatory overtime be crafted to protect all direct care and diagnostic workers and their patients, including but not limited to nurses in acute care hospitals. Health care facilities are contending with high vacancy rates among a variety of professional and technical classifications, as well as among certified nursing assistants. Direct care workers in many long term care settings cite long hours as a leading factor in the critical shortage of caregivers in this sector, a huge concern in Pennsylvania given our aging population and increasing demand for long term care.<sup>18</sup> As referred to above, average staff turnover in Pennsylvania nursing homes is an incredible 50.4%, and can be considerably higher in individual nursing homes. The Para-Professional Healthcare Institute included in its recommendations to stabilize the long term care workforce that “overtime should never be mandatory.”<sup>19</sup> Recognizing this imperative, legislators in our neighboring state of New Jersey were careful to include all direct care and diagnostic workers in all health care settings when crafting that state’s mandatory overtime legislation.

In his response to the report on the nursing shortage issued recently by the Pennsylvania General Assembly’s Legislative Budget and Finance Committee, Secretary of Labor and Industry Stephen M. Schmerin wrote articulately of the need for legislators and policy makers to ensure that their efforts to stabilize the health care workforce are inclusive of all caregivers in all settings. He wrote that the health care workforce crisis “goes beyond just registered and licensed practical nurses to include direct care workers, respiratory therapists, pharmacists, medical technicians, and the imaging professions. For example, in Pennsylvania’s long term care facilities, less than 10% of the 60,000 employees are registered nurses . . . It is crucial for the Commonwealth to send a message that all health care workers are important and valued.”<sup>20</sup>

### **Limits on Mandatory Overtime Are Good for Health Care Providers**

In addition to benefiting patients and health care workers, placing limits on mandatory overtime will also benefit health care providers. Overtime hours are costly to health care

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<sup>16</sup> PA Department of Health, *Special Report*, p. 64.

<sup>17</sup> PA Department of Health, *Special Report*, p. 53.

<sup>18</sup> Report to Congress, *The Future Supply of Long-Term Care Workers*.

<sup>19</sup> Para-Professional Healthcare Institute, *Direct Care Health Care Workers – The Unnecessary Crisis in Long-Term Care*, January 2001.

<sup>20</sup> Legislative Budget and Finance Committee, *Pennsylvania’s Response*, Appendix L.

facilities and use resources that could otherwise be spent on improving working conditions and patient care. By increasing retention, lowering turnover, and reducing vacancy rates, legislation to prohibit mandatory overtime except in legitimate emergencies will ultimately help providers' bottom lines. Replacing one registered nurse who burns out and leaves a hospital costs between \$46,000 and \$64,000.<sup>21</sup> Last year, one Pennsylvania hospital spent as much as \$6.8 million on wages for expensive, outside agency nursing staff to fill vacancies.<sup>22</sup> The annual cost of staff turnover to Pennsylvania nursing homes is over \$21 million.<sup>23</sup> A study by VHA, a nationwide network of community-owned health care systems and their physicians, shows that turnover results in higher costs per discharge, lower returns on assets, increased risk-adjusted mortality scores and increased severity-adjusted length-of-stay rates.<sup>24</sup>

Placing restrictions on mandatory overtime legislatively will also reduce labor strife and strikes: "In an effort to retain nurses at one Schuylkill County hospital, the employer offered a 13% raise in addition to the nurses' recently negotiated raises. Nurses turned down the offer because the administrator refused to address mandatory overtime."<sup>25</sup> Mandatory overtime has been a major issue in recent hospital strikes in Wilkes-Barre and Philadelphia.

### **Addressing the Claims of Opponents of Legislative Action on MOT**

Given all of the evidence, both empirical and anecdotal, banning mandatory overtime except in clearly defined emergencies would seem to be an obvious positive step for Pennsylvania health care workers and for the general public. In fact, most hospital administrators and health care industry representatives readily admit that mandatory overtime is a noxious practice which ought to be minimized or eliminated. So why do some of these same interests oppose enacting legislation to do just that? First, some industry representatives argue that although forced overtime is bad, it is simply not possible to operate health care institutions without it given the current workforce shortages. But seven states have already enacted legislative prohibitions on mandatory overtime, including our neighboring states of New Jersey, Maryland, and West Virginia. A ban has recently passed the legislature in Connecticut and awaits their Governor's signature. If a hospital or nursing home in Camden, Hagerstown, or Weirton can operate without mandatory overtime, why not a similar facility in Philadelphia, Gettysburg, or Pittsburgh?

In recent months, Pennsylvania hospitals as diverse as Allegheny General Hospital in Pittsburgh (a major academic medical center), The Medical Center of Beaver (a large community hospital), and Brookville Hospital (a small facility serving a rural community), have all agreed to ban mandatory overtime in their collective bargaining agreements with members of District 1199P/SEIU, using contract language similar to or stronger than the provisions proposed in Senate Bill 722. If these diverse health care facilities can take this step, then all health care institutions in Pennsylvania can certainly do the same. And we need legislative action to extend

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<sup>21</sup> Nursing Executive Committee, *Reversing the Flight of Talent: Nursing Retention in an Era of Gathering Shortage*, 2000.

<sup>22</sup> District 1199P/SEIU, based upon documents provided by Allegheny General Hospital, 2003.

<sup>23</sup> Pennsylvania Intra-Governmental Council on Long Term Care. *Pennsylvania's Frontline Workers in Long Term Care: The Provider Organization Perspective*, 2001.

<sup>24</sup> VHA Research Series, *The Business Case for Workforce Stability*, Keith Kosel and Tom Olivo, 2002.

<sup>25</sup> District 1199P/SEIU, *Condition Critical*, 2001.

mandatory overtime protections to the 85% of Pennsylvania health care workers who are not covered by collective bargaining agreements.

Second, opponents argue that MOT legislation is not necessary because the practice is not widespread. But as discussed above, the DoH survey shows that mandatory overtime is a serious problem, affecting at least 1 in 8 Pennsylvania nurses every two weeks, and even larger segments of the workforce in specific types of worksites such as hospitals and state inpatient facilities. Anecdotal reports reveal that individual administrators and managers at some facilities and on some patient care units require significant amounts of mandatory overtime, well beyond the aggregate incidence of MOT found in the DoH survey and other studies.

Furthermore, the prevalence of MOT is often understated due to a variety of practices. At one facility in northeastern Pennsylvania, a bonus is paid to a worker if he/she volunteers for overtime, but not if he/she is mandated. The result is that the employee is certain to volunteer to avoid the impending mandation that will deny him/her the bonus payment. Some health care providers who claim not to use MOT require their employees to “volunteer “ for a preset number of shifts per month or pay period as a condition of employment. At facilities across the state, health care workers will often volunteer to take the place of coworker who is about to be mandated in cases where the worker would be forced to miss an important family event.

Enlightened health care employers that have already eliminated mandatory overtime would obviously not be affected by proposed legislation to ban this dangerous practice except in emergencies. But workers and patients in “bad actor” institutions that continue to use mandatory overtime inappropriately would gain badly needed protections from legislative action.

Finally, some will argue that prohibiting mandatory overtime will increase costs and place additional financial burdens on health care facilities by requiring them to hire more workers. By improving retention, reducing turnover, and lowering vacancy rates of staff – as well preventing unnecessary medical errors and contributing to better patient outcomes – legislation to restrict the practice of MOT will in fact save employers, and the taxpayers of the Commonwealth, precious health care resources. It’s time to take concrete steps to solve the staffing crisis and protect consumers by improving conditions for frontline workers and ensuring that every patient is attended to by an alert and well-rested caregiver.

If you want to know how to protect patients and solve the health care staffing crisis in Pennsylvania, ask the caregivers of our state. That’s what our union did, commissioning an independent poll of registered nurses in southwestern Pennsylvania in the spring of 2002. 91% of frontline caregivers support legislation to ban mandatory overtime except in emergencies. More than ten thousand of them have sent post cards to their legislators in support of this initiative, and more postcards are coming in by the day and by the week.

The issues are straightforward: Is it acceptable for Pennsylvania’s dedicated frontline health care workers in our hospitals, nursing homes, and other health care facilities to be compelled against their will to work long hours beyond their shifts in non-emergent situations? Does any of us want to be the patient attended to by a caregiver who has been forced to work for 12, 16, or more hours at the bedside? The members of Pennsylvania’s Health Care Union, District 1199P/SEIU answer no to both of these questions, and we urge our elected officials to do

the same. We call upon our legislators to take action to solve the staffing crisis and secure the safety of patients and residents.

**Recommendation: Enact Senate Bill 722**

District 1199P, Service Employees International Union recommends that the Commonwealth of Pennsylvania improve the delivery of health care services to patients and improve working conditions for health care employees by prohibiting mandatory overtime, except in clearly defined, bona fide emergencies..

We recommend passing legislation which includes the following provisions:

- Protects all health care workers who are involved in direct patient care or diagnostic work in order to ensure that patient safety is not compromised.
- Because mandatory overtime is utilized in nursing homes, acute care hospitals, facilities operated by the Commonwealth, and psychiatric facilities, legislation must cover all settings in which patient care is delivered.
- Mandatory overtime should be permitted during declared emergencies, and other catastrophic events. Legislation needs to be carefully written to ensure MOT cannot be used because the health care provider failed to schedule enough staff to cover for staff illnesses, or census increases that occur on a routine basis.
- Adequate protections must be included in the legislation to protect health care workers from retaliation for refusing or reporting mandatory overtime.

SB 722 contains all of the key provisions listed above. This legislation is closely modeled after legislation enacted by the state of New Jersey. We believe that the time has come for Pennsylvania to end the practice of mandatory overtime, and to make our health care system safer for the citizens of Pennsylvania. I urge you to vote SB 722 out of the Senate Judiciary Committee.

Thank you.