

Reduction of Hospital Turnover -S.B. 476

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### **Introduction to Policy Problem**

As hospitals strive to meet the ever increasing need for caring for the most complex patients, there have not been any state statutes addressing mandatory overtime by nurses within the State of Texas until S.B. 476. According to a survey done in Texas in 2006, the turnover rate among nurses was 18.2 percent (Texas Department of State Health Services). Factors that have contributed to this turnover rate include mandatory overtime and inadequate staffing of hospitals (Agency for Healthcare Research and Quality, 2007). In a national American Nurses Association (ANA) survey, seventeen percent of randomly selected nurses reported being required to work mandatory overtime ten or more times during the past 28 days (Rogers, Hwang, Scott, & al, July-August, 2004). Fortunately, S.B. 476 was signed into Texas law by Governor Perry on 09/01/2009 which prohibits mandatory overtime in the state of Texas as well as addresses procedures for staffing concerns within hospital organizations (S.B. 476).

### **Policy Problem**

S.B. 476 amends the current law regarding staffing, overtime, as well as protects employment for nurses in the State of Texas. This bill includes legislation regarding nursing staffing committees as well as mandatory overtime for nurses. Senator Jane Nelson is the primary author of the bill. Wendy Davis, and Senator Carlos Uresti are the coauthors of the bill (S.B. 476). This bill was enacted to provide legislative action concerning a nurse staffing policy as well as prevention of mandatory overtime for nurses in Texas.

One objective of S.B. 476 includes establishing a mechanism between hospital management and nurses to participate in a joint process regarding staffing of nurses within the organization (“Bill analysis of S.B. 476,” 2009). This objective requires a hospital to adopt, implement, and enforce a written policy that ensures adequate staffing and skill mix of nurses to

meet the level of patient care. As part of this objective, nursing staff are required to have documented input concerning staffing decisions, staffing budgets, and committee evaluation of the plan. Plans for staffing for organizations should also be set to meet minimum standards for staffing of units including a contingency plan when patient care needs exceed patient care staff resources available. Hospitals are also required to submit documentation of these measures to the hospitals governing body on a semiannual basis.

The second objective of S.B. 476 is to prohibit hospitals from requiring a nurse to work mandatory overtime, and authorizes a nurse to refuse to work mandatory overtime (“Bill analysis of S.B. 476”). The bill further prohibits a hospital from using on-call time as a substitute for mandatory overtime. This section of the bill does not prohibit a nurse from volunteering to work overtime. There are exceptions to the prohibition of mandatory overtime including:

1. In a health care disaster that unexpectedly affects the county in which the nurse is employed
2. A federal, state, or county declaration of emergency is in effect in the county in which the nurse is employed
3. There is an emergency or unforeseen event of a kind that does not regularly occur, and increases the need for health care personnel at the hospital to provide safe patient care, and could not be anticipated by the hospital
4. The nurse is actively engaged in an ongoing medical or surgical procedure and the continued presence of the nurse through the completion of the procedure is necessary to ensure the health and safety of the patient.

A companion bill was also filed, HB-591, which was sponsored by the following members of the Texas House of Representatives Donna Howard, Representative Susan King, Representative Gattis, Representative Guillen, and Representative Maldonado.

## **Background**

Health care quality has been the discussion of multiple recent studies, articles, as well as a topic which is current and relevant to health care today. The Institute of Medicine (IOM) as well as the Agency for Healthcare Research and Quality (AHRQ) both presented information studying both quality and staffing of health care personnel. The IOM released a landmark article which has prompted ongoing inquiry regarding the safety of patient care within the U.S. (Institute of Medicine, 1999). In a recent study released by Health Grades in 2010, study findings state 958,202 total patient safety events, which led to 99,810 hospital patient deaths from 2006-2008. Estimates state that 97.19% of the 99,810 deaths during this time or 96,402 of these deaths could be directly attributable to a patient safety event (May & Fortner). Recommendations for improving safety for patients included: work practice design to prevent fatigue and unsafe work, adequate staffing, provision of adequate ongoing clinical decision making support... (Page, 2006).

## **Societal Factors**

Each society has specific social factors that drive health care expectations for the provider, the health care system, and society members. In the U.S., the societal expectation for health care is that it is always available and unrestricted by time or location. Hospitals are expected to accommodate any unexpected events with the staffing that they provide. The community expectations are that hospitals can accommodate any type of emergency at any time. Health care facilities implement several different options for staffing for these unpredictable events on a routine basis including: float pools, part time staff, on-call staff, shift length differences, and overtime (Warmuth, Borgerding, & Merline, 2006).

Nurses also have their own expectations based on the appropriateness of working conditions within health care. Because of the implication of patient abandonment and the

inability to refuse overtime from a nurses' perspective patient safety can be impacted by mandatory overtime. Prior to this restriction of mandatory overtime, a nurse could not refuse to work mandatory overtime because this could constitute patient abandonment or neglect (Velazquez, 2009). In a recent Health Research Institute (HRI) survey scheduling mandatory overtime was a major factor in nursing dissatisfaction/turnover among nurses surveyed (PricewaterhouseCoopers Health Research Institute, 2007). In a 2008 National Survey of Registered Nurses that evaluated hospital workplace environment, RNs have been asked if overtime hours have increased, decreased, or stayed the same in the hospitals in which they work (Buerhaus, Donelan, DesRoches, & Hess, 2009). This survey shows that 34% of RNs reported increases in overtime in the past year which is an increase over the prior survey of 29% reporting increases in overtime. RNs were asked if overtime was mandatory or voluntary. In 2008 significantly fewer (25%) RNs reported that overtime was "voluntary but it feels like is required" when compared to 30% noted in 2006 (Buerhaus, et al., p. 296).

As with other types of professionals such as those within various industries (railroad workers, pilots, and transportation, for example) have mandated prohibitions regarding mandatory overtime as well as dictate the circumstances in which the shift can be lengthened without jeopardizing the safety of the worker or public. Nurses, however, have not been protected by these mandates on a Texas state level or at a national level. Prohibition of mandatory overtime can promote the safety and well being of both nurses and patients while encouraging healthcare organizations to find creative solutions to staffing needs.

### **Economic Factors**

Economic factors are also impacted with mandatory overtime. When patient care is jeopardized or not optimal the potential for litigation increases when also causes a rise in health care costs overall. Although mandatory overtime can resolve temporary issues of staffing for the

short term, it is important to consider that this is a short term solution and not a long term fix. If units are not staffed accordingly and mandatory overtime is used as a method to staff an understaffed unit, this also contributes to nursing burnout and turnover which impacts the short term and long term costs to the organization as well as the staff.

Nurses who are subjected to mandatory overtime, however, see this as a way to reduce hospital costs and chronically avoid adequate staffing of hospitals (Warmuth, Borgerding, & Merline, 2006). The financial impact of long work hours, expanded workloads, and mandatory overtime for staff nurses is less costly than hiring temporary staff or additional full-time nurses to alleviate staffing issues (Public Policy Associates, 2004).

Further research by JCAHO along with Voluntary Hospitals of America (VHA) report on workforce stability, reports sentinel events (medical errors) have the potential for sizable malpractice awards, and compromise the quality of patient care (VHA Center for Research and Innovation, 2002). This workforce instability, as demonstrated by high turnover rates and vacancies in staffing, leads to delays in delivering care, decreased work effectiveness, and dissatisfaction for patients (VHA Center for Research and Innovation). Solutions for increasing the stability of the work force that were discussed include improved employee satisfaction and strong worker support to improve patient outcomes within health care (VHA Center for Research and Innovation).

In a recent article from the American Journal of Nursing (2008) the “other side of mandatory overtime—flexing down” was discussed (Nelson & Kennedy). The practice of flexing down occurs when the patient census is low and the unit is then overstaffed and nurses scheduled shifts are routinely cancelled. The nurses affected will not be paid unless they use vacation time to make up the lost wages and maintain their benefits (Nelson & Kennedy). For those sent home without pay, common expectations are for the nurses to remain available,

because they are still considered scheduled to work (Nelson & Kennedy). This practice is a common occurrence within nursing as hospitals strive to meet budgetary demands of health care (Nelson & Kennedy).

### **Ethical Factors**

According to the American Nurses Association (ANA) Code of Ethics for nurses the nurses' primary commitment is to the patient, and the nurse is responsible and accountable for individual nursing practice (2001). Furthermore, the Texas Board of Nursing Standards of Practice state that nurses are obligated to "implement measures to provide a safe environment for clients and others" and "Accept only those nursing assignments that take into consideration client safety and that are commensurate with the nurse's, educational preparation, experience, knowledge, and physical and emotional ability" (Texas Administrative Code, 2007).

Texas also has Safe Harbor Protections which allow protections for the nurse if "Safe Harbor" is requested during a situation the nurse feels she is asked to do an unsafe assignment. The safety of the assignment will then be considered and determined by a group of peers (the Nursing Peer Review Committee) (Texas Administrative Code, 2008). Working mandatory overtime when a nurse is impaired due to fatigue or unfit for work could jeopardize patient safety in specific situations. Although patient safety is paramount, nurses are obligated to perform within the ethical guidelines set forth by the ANA as well as the Texas Administrative Code and Texas Board of Nursing requirements for safe practice to ensure the safety and well being of patients.

### **Political Factors/Legal Factors**

Prior to the passage of SB 476, Subchapter H, Chapter 301, Health and Safety code did not offer protection for refusal of mandatory overtime and further considers refusal of mandatory overtime patient abandonment or neglect for which a nurse could be held accountable by the

Nurse Practice Act for the State of Texas. Patient abandonment or neglect that leads to patient injury or harm is punishable by the Texas Board of Nursing who provides disciplinary action regarding the Texas Nurse Practice Act. Along with the potential for legal action from the Texas Board of Nursing, employees faced potential job loss as well as potential litigation from refusal to accept mandatory overtime.

### **Issue Statement**

How should the state government promote nurse involvement regarding hospital nursing staff needs as well as address concerns regarding mandatory overtime as a strategy used by hospitals?

### **Stakeholders**

The stakeholders in this situation include the individual nurse, patients, nurse's family members, health care providers, hospital staff management, Texas Board of Nursing, Texas Medical Board, nursing organizations, as well as the legislators of Texas.

### **Policy Objectives**

The overall goals of the policy are to improve the working environment for nurses while promoting safe care and staffing within the hospital environments for nurses. This will be accomplished by mandating staff nursing involvement in hospital staffing decisions. The policy would also prohibit mandatory overtime, except in specific situations; and protect nurses if refusing to work mandatory overtime. It is important that this policy be evaluated for ease of implementation, overall benefit, most cost effective, time to implement, and ability to achieve recommendations as criteria for meeting goals and objectives.

### **Analysis of Policy Alternatives**

Alternatives to the above policy are to make no changes to the administrative code. This would be a viable option depending on the resistance to the proposed changes. Opponents to this



bill report that staffing committees are already promoting the welfare of nurses within the hospital environment. Recommendations to continue to study the problem and offer more suitable recommendations at a later date will also be utilized with this recommendation.

Prohibition of mandatory overtime unless special situations apply without mandating staffing committees which involve nurses as well as administrative staff which report to the Department of State Health Services on a semi-annual basis.

Other alternatives to promote staffing include mandated nurse-to-patient ratios. Mandated safe-staffing ratios can provide nurses with the capacity to care for only a limited number of patients at any given time. Each practice environment is different so there is a challenge in mandating nurse-to-patient ratios. The staffing ratios on different units, as well as the complexity of patient acuity are challenging to regulate legislatively. In 2004, California became the first state to regulate minimum nurse-to-patient staffing ratios in acute care hospitals. Health Services Research (HSR) reports that nurse workloads within California care for one less patient on average than nurses in other states and two fewer patients on medical surgical units (Aiken, et al., 2010). Lower ratios are associated with lower patient mortality. Both nurse burnout and job satisfaction, and nurses reported consistently better quality of care when nurse workloads were in line with the levels that are mandated in California (Aiken, et al.). In 2002, HSR also reported a 7 percent increase in mortality following common surgeries, and an increase in burnout and job dissatisfaction as workload for nurses increased (Aiken, Clarke, & Sloane, p. 6). Although this regulation has improved perceived nurse-to-patient ratios, difficulties in mandating this change with consideration to current health care needs in the state of Texas is premature.

### **Policy Alternative Scorecard**

Policy Alternatives are listed on the scorecard listed in Appendix 1. Recommendation is given for the policy that is indicated by SB 476 and it meets 9/10 criteria for the scorecard using this scoring system.

### **Summary/Recommended Policy**

In summary, hospital turnover is a complex issue with multiple possible solutions which can lead to several different solutions to meet the needs of the healthcare organization and legislative agenda. By promoting the best practices regarding patient safety as well as encouraging adequate and appropriate nursing staffing, changes to current legislation need to be made to ban mandatory overtime for nurses. As mandated by SB 476, employers are no longer allowed to force nurses to work mandatory overtime (“Bill analysis of S.B. 476,” 2009). Hospitals as well as nurses are to form committees to discuss and promote adequate nursing staffing within hospitals as well (“Bill analysis of S.B. 476”). This new law promotes healthy relationships between health care management teams, staff nurses, as well as those within nursing. By banning mandatory overtime among nurses SB 476 also provides alternatives for nurses who do not desire to work mandatory overtime due to concerns regarding compromised patient safety issues (“Bill analysis of S.B. 476”).

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**Appendix 1. Alternatives Scorecard**

Alternative Scorecard for Mandatory Overtime

Criteria	SB 476	Establish Nurse Patient Ratios	Exclude Overtime	No change
Ease to Implement	++	--	++	++
Overall Benefit	++	-+	++	--
Most Cost Effective	-+	-+	-+	-+
Time to Implement	++	-+	++	-+
Ability to Meet Goal	++	--	-+	-+
<b>Total Score</b>	<b>+9/-1</b>	<b>+3/-7</b>	<b>+8/-2</b>	<b>+5/-5</b>

Recommendation for promotion and adoption of SB 476

## **Appendix 2. Brief of Reduction of Hospital Turnover**

### **THE ISSUE**

In 1999 the Institute of Medicine published its landmark article on patient safety. In the 11 years since the study has been released, patients, providers, as well as health care as a whole have transformed to meet demands for increased patient safety. Nurses are the largest group of healthcare workers in the United States and have a very large impact on patient safety.

### **BACKGROUND**

- In a recent study released by Health Grades in 2010, study findings state 958,202 total patient safety events, which led to 99,810 hospital patient deaths from 2006-2008.
- Estimates state that 97.19% of the 99,810 deaths during this time or 96,402 of these deaths could be directly attributable to a patient safety event (May & Fortner).
- Here in the U.S., the societal expectation for health care is that it is always available and unrestricted by time or location.
- Those working in transportation have mandated prohibitions regarding mandatory overtime.
- Nurses, however, have not been protected by these mandates.
- Prior to the passage of SB 476, Subchapter H, Chapter 301, Health and Safety code did not offer protection for refusal of mandatory overtime and further considers refusal of mandatory overtime patient abandonment or neglect for which a nurse could be held accountable by the Nurse Practice Act for the State of Texas.

### **POLICY OBJECTIVE:**

The goal of the objective is to improve the working environment for nurses while promoting safe care and staffing within the hospital environments for nurses. This will be accomplished by mandating staff nursing involvement in hospital staffing decisions. The policy would also prohibit mandatory overtime, except in specific situations; and protect nurses if refusing to work mandatory overtime. It is important that this policy be evaluated for ease of implementation, overall benefit, most cost effective, time to implement, and ability to achieve recommendations.

### **ALTERNATIVES:**

1. Recommend ban on mandatory overtime for nurses, except in specific situations; Mandate nursing staff involvement in scheduling and staffing issues involving nurses.
2. Recommend ban on mandatory overtime for nurses, except in specific situations. Make no changes regarding mandate for nursing involvement regarding staffing committees.
3. Do not change overtime status, but mandate nurse to patient ratios for the state of Texas.
4. Do nothing except recommend further study and research for decreasing hospital turnover in the state of Texas.

### **RECOMMENDATIONS:**

Vote for passage of legislation that would enact SB 476 that includes mandating nursing involvement in staffing committees that manage staffing for nurses. Mandate prohibition of mandatory overtime, except in specific situations.

### **Appendix 3. Talking Points**

#### **Reduction of Hospital Turnover**

- The IOM released a landmark article which has prompted ongoing inquiry regarding the safety of patient care within the U.S. (Institute of Medicine, 1999).
- This bill was enacted to provide legislative action concerning a nurse staffing policy as well as prevention of mandatory overtime for nurses in Texas.
- Prior to the passage of SB 476, Subchapter H, Chapter 301, Health and Safety code did not offer protection for refusal of mandatory overtime and further considers refusal of mandatory overtime patient abandonment or neglect for which a nurse could be held accountable by the Nurse Practice Act for the State of Texas.
- California statutes regarding nurse-patient ratios encourage minimum standards for acute care hospitals.

#### **Alternative Measures to SB 476**

- Staffing committees are already promoting the welfare of nurses within the hospital environment in current statutes enacted in 2004.
- Mandated safe-staffing ratios can provide nurses with the capacity to care for only a limited number of patients at any given time.
- Both nurse burnout and job satisfaction, and nurses reported consistently better quality of care when nurse workloads were in line with the levels that are mandated in California (Aiken, et al.).
- Recommendations to continue to study the problem and offer more suitable recommendations at a later date will also be utilized with this recommendation.

#### **Recommended Action**

- Promote further study and evaluation to consider alternatives to SB 476 and ***oppose SB 476***