

Quality Improvement and Patient Protection Committee

Health Policy Commission

Committee Meeting
June 10, 2013



Agenda

- Approval of minutes from April 26, 2013 meeting
- Hearing on Emergency Regulations relative to the Office of Patient Protection
- Guidelines on Mandatory Nurse Overtime
- Schedule of next committee meeting

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Hearing on Emergency Regulations

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- Adoption of Health Policy Commission Regulations
 - 958 CMR 3.00 – Health Insurance Consumer Protection
 - 958 CMR 4.00 – Health Insurance Open Enrollment Waivers

 - Repeal of Department of Public Health Regulations
 - 105 CMR 128.00 – Health Insurance Consumer Protection
 - 105 CMR 129.00 – Health Insurance Open Enrollment Waivers
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New law on mandatory nurse overtime

Section 226 provides in pertinent part that:

- b) Notwithstanding any general or special law to the contrary, a hospital shall not require a nurse to work mandatory overtime except in the case of an emergency situation where the safety of the patient requires its use and when there is no reasonable alternative.
- c) Under section (b), whenever there is an emergency situation where the safety of a patient requires its use and when there is no reasonable alternative, the facility shall, before requiring mandatory overtime, make a good faith effort to have overtime covered on a voluntary basis. Mandatory overtime shall not be used as a practice for providing appropriate staffing for the level of patient care required.



Goals

- Prohibit the use of mandatory overtime for nurses as a hospital staffing strategy
- Ensure that mandatory overtime is only used in exceptional circumstances, as a last resort
- Protect patient safety

Role of the Health Policy Commission

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- Section 226 (d) specifies that the Health Policy Commission (“Commission”) established by section 2 of chapter 6D of the General Laws, **“shall develop guidelines and procedures to determine what constitutes an emergency situation for the purposes of allowing mandatory overtime.”**
 - In developing the guidelines, the Commission is required to “consult with employees and employers who would be affected by such a policy” and also “to solicit comment from those same parties through a public hearing.”
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Process of developing guidelines

<ul style="list-style-type: none">▪ Listening Session - QIPP Committee meeting<ul style="list-style-type: none">— 200 attendees— Testimony from labor unions representing nurses and other workers, hospitals, nurse leaders/executives and community organizations	Feb 22, 2013
<ul style="list-style-type: none">▪ Staff Research and Analysis	Spring 2013
<ul style="list-style-type: none">▪ QIPP Committee Meeting discussion	Apr 3, 2013
<ul style="list-style-type: none">▪ Health Policy Commission meeting	Apr 24, 2013
<ul style="list-style-type: none">▪ Public Hearing<ul style="list-style-type: none">— Testimony from nurses and hospital representatives— Received additional written testimony through 5/10/13	Apr 26, 2013
<ul style="list-style-type: none">▪ QIPP Committee Meeting discussion	Jun 10, 2013
<ul style="list-style-type: none">▪ Health Policy Commission meeting<ul style="list-style-type: none">— Adopt Guidelines	Jun 19, 2013

Proposed guidelines for determining what constitutes an emergency situation (1/4)

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- An emergency situation for the purposes of allowing mandatory overtime under Section 226 means an unforeseen event that could not be prudently planned for or anticipated by a hospital and affects patient safety in the hospital and where there is a:
 - Government declaration of emergency
 - Catastrophic event
 - Hospital emergency
 - Mandatory overtime shall not be ordered in the case of an emergency situation where there is a reasonable alternative to such overtime.
 - Where an unexpected vacancy occurs despite a hospital's implementation of a reasonable alternative, the hospital is required to exercise a good faith effort to fill the shift on a voluntary basis.
 - A determination that an emergency situation exists shall be made by a hospital's chief executive officer or a specific senior management designee and must be reasonable under the circumstances.
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Proposed guidelines for determining what constitutes an emergency situation (2/4)

Definition

Government declaration of emergency	<ul style="list-style-type: none">▪ A federal, state, municipal, or local declaration of emergency that takes effect pursuant to applicable federal or state law.
Catastrophic event	<ul style="list-style-type: none">▪ An unforeseen event that substantially affects or increases the need for health care services, such as a natural disaster, an act of terrorism, or an extended power outage.▪ Examples of catastrophic events include, but are not limited to, events involving numerous serious injuries (e.g., fires, multiple automobile accidents, a building collapse), a chemical spill, widespread outbreak of disease or illness requiring emergency treatment or hospitalization for many in the hospital's service area.
Hospital emergency	<ul style="list-style-type: none">▪ A situation internal to the hospital that is unforeseen and could not be prudently planned for or anticipated by the hospital, and that substantially affects the delivery of medical care or increases the need for health care services.▪ Examples of hospital emergencies may include, but are not limited to, a riot or other disturbance within the hospital , an extended power outage or system failure that impacts care delivery or compromises patient safety. A hospital emergency may include an ongoing medical or surgical procedure in which a nurse is actively engaged and where that particular nurse's continued presence beyond the end of a scheduled shift was unforeseen and necessary to ensure the health and safety of the patient.▪ Shall not include a situation that is the result of routine staffing needs caused by typical staffing patterns, typical levels of absenteeism, or time off typically approved by the hospital for vacation, holidays, sick leave, and personal leave.

Proposed guidelines for determining what constitutes an emergency situation (3/4)

Examples include:

Reasonable alternative

- Maintaining a “float pool”
- Creating and posting schedules with minimal staffing gaps at least four weeks in advance of scheduled shifts for the purpose of filling any vacant shifts
- Taking action to fill any remaining vacancies before such shifts occur
- Establishing an “availability list” or “on-call” list of nurses who may be available to volunteer for unexpected vacancies
- Convening daily pre-shift huddles to determine patient placement and staffing requirements
- Ensuring the hospital’s “emergency operations plan” or “disaster plan” provides for staffing assignments during an emergency situation

Good faith effort

- Reaching out to all available qualified staff who are working at the time of the emergency situation
- Contacting qualified employees who have made themselves available to work extra time
- Seeking the use of off-duty, per diem, and part-time nurses
- Seeking personnel from a contracted temporary agency when such staff is permitted by law or regulation
- Determining whether coverage is available from other units in the hospital

Proposed guidelines for determining what constitutes an emergency situation (4/4)

Ongoing monitoring of implementation by HPC

Section 226 requires hospitals to report all incidences of mandatory overtime under the laws to the Department of Public Health

- To review and monitor the implementation of and hospital compliance with these guidelines and procedures, the Commission shall review reports submitted to the Department of Public Health pursuant to M.G.L. c. 111, section 226 about the instances of overtime for nurses mandated by Massachusetts hospitals and shall determine whether changes should be made to the guidelines in accordance with the purposes of the law

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Contact information

For more information about the Health Policy Commission:

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