

HOUSE BILL NO. 5471

February 06, 2020, Introduced by Reps. Anthony, Hope, Brenda Carter, Kennedy, Sneller, Cherry, Sabo, Kuppa, Cynthia Johnson, Garrett, Manoogian, Rabhi and Jones and referred to the Committee on Health Policy.

A bill to prohibit certain health care facilities from requiring employees to work overtime; and to provide for the powers and duties of certain state governmental officers and entities.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the
2 "prohibition of overtime in health care act".

3 Sec. 3. As used in this act:

4 (a) "Clinical care service" means a diagnostic, treatment, or



1 rehabilitative service, including, but not limited to, radiology
2 and diagnostic imaging, radiation therapy, phlebotomy,
3 electrocardiogram and electroencephalography, and laboratory work.

4 (b) "Department" means the department of licensing and
5 regulatory affairs.

6 (c) "Director" means the director of the department.

7 (d) "Health care employee" means, except as otherwise provided
8 in subdivision (e), an individual who meets all of the following
9 requirements:

10 (i) He or she is employed by a health care facility or is
11 employed through a personnel agency.

12 (ii) He or she provides direct patient care activities or
13 clinical care services in the health care facility.

14 (iii) He or she is compensated on an hourly basis or, if he or
15 she is not compensated on an hourly basis, he or she is not a
16 supervisory employee.

17 (e) "Health care employee" does not include a physician,
18 physician's assistant, or dentist, or an individual who provides to
19 a health care facility environmental services, clerical work,
20 maintenance, food service, or any another service that does not
21 involve direct patient care activities or clinical care services.

22 (f) "Health care facility" means, except as otherwise provided
23 in subdivision (g), any of the following:

24 (i) A freestanding surgical outpatient facility as that term is
25 defined in section 20104 of the public health code, 1978 PA 368,
26 MCL 333.20104.

27 (ii) A hospital as that term is defined in section 20106 of the
28 public health code, 1978 PA 368, MCL 333.20106.

29 (iii) A hospital long-term care unit as that term is defined in



1 section 20106 of the public health code, 1978 PA 368, MCL
2 333.20106.

3 (iv) A hospice as that term is defined in section 20106 of the
4 public health code, 1978 PA 368, MCL 333.20106.

5 (g) "Health care facility" does not include a facility that
6 provides treatment solely on the basis of prayer or spiritual means
7 in accordance with the tenets of a church or religious
8 denomination.

9 (h) "Personnel agency" means a person whose primary business
10 is to provide a health care facility with the temporary services of
11 1 or more health care employees who are under a contract with the
12 person to perform services for a health care facility.

13 (i) "On-call employee" means a health care employee who is not
14 working on the premises of a health care facility but is
15 compensated for his or her availability or, as a condition of his
16 or her employment, has agreed to be available to return to the
17 premises of the health care facility on short notice if the need
18 arises.

19 (j) "Reasonable efforts" means an attempt by a health care
20 facility to do 1 or more of the following:

21 (i) Seek health care employees who volunteer to work extra time
22 from available and qualified health care employees who are working
23 at the time of an unforeseeable emergent circumstance.

24 (ii) Contact each qualified health care employee who has made
25 him- or herself available to work extra time.

26 (iii) Seek personnel from a personnel agency with which the
27 health care facility has a contract.

28 (k) "Unforeseeable emergent circumstance" means, except as
29 otherwise provided in subdivision (l), any of the following:



1 (i) An unforeseeable declared national, state, or municipal
2 emergency.

3 (ii) A highly unusual or extraordinary event that is
4 unpredictable or unavoidable and that substantially affects the
5 provision of needed health care services or increases the need for
6 health care services, including, but not limited to, an act of
7 terrorism, a natural disaster, or a widespread disease outbreak.

8 (iii) Unexpected absences, discovered by the health care
9 facility at or before the commencement of a scheduled shift, that
10 could not be planned for by the health care facility and that
11 significantly affect patient safety.

12 (l) Unforeseeable emergent circumstance does not include
13 absences caused by chronic short staffing.

14 Sec. 5. (1) Except as otherwise provided in subsection (2), a
15 health care facility shall not require a health care employee to
16 work in excess of the health care employee's agreed to,
17 predetermined, and regularly scheduled daily work shift.

18 (2) A health care facility does not violate subsection (1) if
19 any of the following circumstances apply:

20 (a) An unforeseen emergency situation occurs, the assignment
21 of additional hours to a health care employee is used by the health
22 care facility as a last resort, the health care facility exhausts
23 reasonable efforts to obtain another health care employee, and, if
24 the health care employee has a minor, elderly, or disabled family
25 member in his or her care, the health care facility provides the
26 health care employee with a reasonable amount of time to arrange
27 for the care of the family member but not to exceed 2 hours.

28 (b) A health care employee is assisting with a patient-care
29 procedure that extends beyond the health care employee's agreed to,



1 predetermined, and regularly scheduled daily work shift and the
2 absence of the health care employee during the patient-care
3 procedure could have an adverse effect on the patient.

4 (c) A health care employee voluntarily accepts a work
5 assignment that causes the health care employee's hours to exceed
6 his or her agreed to, predetermined, and regularly scheduled daily
7 work shift.

8 (d) A health care employee is an on-call employee, unless the
9 director determines that the health care facility is using on-call
10 employees to circumvent subsection (1).

11 (3) If a circumstance described in subsection (2) applies and
12 a health care employee is required to work or volunteers to work
13 more than 12 consecutive hours at a health care facility, the
14 health care facility shall provide the health care employee with at
15 least 10 consecutive hours of off-duty time immediately after the
16 health care employee completes his or her shift unless the health
17 care employee voluntarily agrees to waive the off-duty time.

18 Sec. 7. A health care facility shall not discharge or
19 discipline, threaten to discharge or discipline, or otherwise
20 discriminate against a health care employee regarding the health
21 care employee's compensation, terms, conditions, assignment, or
22 privileges of employment because the health care employee refuses
23 to accept a work assignment that causes the health care employee's
24 hours to exceed his or her agreed to, predetermined, and regularly
25 scheduled daily work shift.

26 Sec. 9. This act does not prohibit any of the following:

27 (a) A health care facility from hiring part-time employees.

28 (b) A health care facility from providing health care
29 employees with more protection from mandatory overtime than the



1 minimum established under this act.

2 Enacting section 1. This act does not take effect unless

3 Senate Bill No. _____ or House Bill No.5472 (request no. 05599'20) of

4 the 100th Legislature is enacted into law.

