



## 95TH GENERAL ASSEMBLY

### State of Illinois

2007 and 2008

HB5677

by Rep. Brandon W. Phelps

#### SYNOPSIS AS INTRODUCED:

20 ILCS 510/510-40 new  
20 ILCS 1705/4.2a new  
20 ILCS 2310/2310-12 new  
20 ILCS 2805/2.09 new  
305 ILCS 5/12-4.37 new  
730 ILCS 5/3-6-2.10 new

Amends the Department of Children and Family Services Powers Law of the Civil Administrative Code of Illinois, the Mental Health and Developmental Disabilities Administrative Act, the Department of Public Health Powers and Duties Law of the Civil Administrative Code of Illinois, the Department of Veterans Affairs Act, the Illinois Public Aid Code, and the Unified Code of Corrections. Provides that no nurse who is paid an hourly wage and who has direct responsibility to oversee or carry out nursing care or related duties may be required to work mandated overtime except in the case of an unforeseen emergent circumstance when such overtime is required only as a last resort, and limits the time of such overtime. Provides that when a nurse is mandated to work up to 12 consecutive hours, the nurse must be allowed at least 8 consecutive hours of off-duty time. Prohibits retaliation because a nurse refuses to work mandated overtime as prohibited under these provisions. Authorizes the filing of complaints alleging violations of these provisions. Effective immediately.

LRB095 15672 DRJ 41677 b

FISCAL NOTE ACT  
MAY APPLY

A BILL FOR

1 AN ACT concerning State government.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 Section 5. The Department of Children and Family Services  
5 Powers Law of the Civil Administrative Code of Illinois is  
6 amended by adding Section 510-40 as follows:

7 (20 ILCS 510/510-40 new)

8 Sec. 510-40. Nurse mandated overtime prohibited.

9 (a) Definitions. As used in this Section:

10 "Mandated overtime" means work that is required by the  
11 Department in excess of an agreed-to, predetermined work shift.  
12 Time spent by nurses required to be available as a condition of  
13 employment in specialized units shall not be counted or  
14 considered in calculating the amount of time worked for the  
15 purpose of applying the prohibition against mandated overtime  
16 under subsection (b).

17 "Nurse" means any advanced practice nurse, registered  
18 professional nurse, or licensed practical nurse, as defined in  
19 the Nurse Practice Act, who receives an hourly wage and has  
20 direct responsibility to oversee or carry out nursing care or  
21 related duties.

22 "Unforeseen emergent circumstance" means (i) any declared  
23 national, State, or municipal disaster or other catastrophic

1 event, or any implementation of a disaster plan, that will  
2 substantially affect or increase the need for health care  
3 services or (ii) any circumstance in which patient care needs  
4 require specialized nursing skills through the completion of a  
5 procedure. An "unforeseen emergent circumstance" does not  
6 include situations in which the Department fails to have enough  
7 nursing staff to meet its usual and reasonably predictable  
8 nursing needs.

9 (b) Mandated overtime prohibited. No nurse may be required  
10 to work mandated overtime except in the case of an unforeseen  
11 emergent circumstance when such overtime is required only as a  
12 last resort. Such mandated overtime shall not exceed 4 hours  
13 beyond an agreed-to, predetermined work shift.

14 (c) Off-duty period. When a nurse is mandated to work up to  
15 12 consecutive hours, the nurse must be allowed at least 8  
16 consecutive hours of off-duty time immediately following the  
17 completion of a shift.

18 (d) Retaliation prohibited. The Department may not  
19 discipline, discharge, or take any other adverse employment  
20 action against a nurse solely because the nurse refused to work  
21 mandated overtime as prohibited under subsection (b).

22 (e) Violations. Any employee of the Department of Children  
23 and Family Services who is subject to this Section may file a  
24 complaint with the Department of Labor regarding an alleged  
25 violation of this Section. The complaint must be filed within  
26 45 days following the occurrence of the incident giving rise to

1 the alleged violation. The Department of Labor must forward  
2 notification of the alleged violation to the Department of  
3 Children and Family Services within 3 business days after the  
4 complaint is filed. The Department of Labor shall work with the  
5 Department of Children and Family Services to resolve the  
6 alleged violation.

7 (f) Proof of violation. Any violation of this Section must  
8 be proved by clear and convincing evidence that a nurse was  
9 required to work overtime against his or her will. The  
10 Department may defeat the claim of a violation by presenting  
11 clear and convincing evidence that an unforeseen emergent  
12 circumstance, which required overtime work, existed at the time  
13 the employee was required or compelled to work.

14 Section 10. The Mental Health and Developmental  
15 Disabilities Administrative Act is amended by adding Section  
16 4.2a as follows:

17 (20 ILCS 1705/4.2a new)

18 Sec. 4.2a. Nurse mandated overtime prohibited.

19 (a) Definitions. As used in this Section:

20 "Mandated overtime" means work that is required by a  
21 facility described in subsection (a) of Section 4 of this Act  
22 in excess of an agreed-to, predetermined work shift. Time spent  
23 by nurses required to be available as a condition of employment  
24 in specialized units shall not be counted or considered in

1 calculating the amount of time worked for the purpose of  
2 applying the prohibition against mandated overtime under  
3 subsection (b).

4 "Nurse" means any advanced practice nurse, registered  
5 professional nurse, or licensed practical nurse, as defined in  
6 the Nurse Practice Act, who receives an hourly wage and has  
7 direct responsibility to oversee or carry out nursing care.

8 "Unforeseen emergent circumstance" means (i) any declared  
9 national, State, or municipal disaster or other catastrophic  
10 event, or any implementation of the disaster plan of a facility  
11 described in subsection (a) of Section 4, that will  
12 substantially affect or increase the need for health care  
13 services or (ii) any circumstance in which patient care needs  
14 require specialized nursing skills through the completion of a  
15 procedure. An "unforeseen emergent circumstance" does not  
16 include situations in which a facility fails to have enough  
17 nursing staff to meet the usual and reasonably predictable  
18 nursing needs of its patients.

19 (b) Mandated overtime prohibited. No nurse may be required  
20 to work mandated overtime except in the case of an unforeseen  
21 emergent circumstance when such overtime is required only as a  
22 last resort. Such mandated overtime shall not exceed 4 hours  
23 beyond an agreed-to, predetermined work shift.

24 (c) Off-duty period. When a nurse is mandated to work up to  
25 12 consecutive hours, the nurse must be allowed at least 8  
26 consecutive hours of off-duty time immediately following the

1 completion of a shift.

2 (d) Retaliation prohibited. No facility may discipline,  
3 discharge, or take any other adverse employment action against  
4 a nurse solely because the nurse refused to work mandated  
5 overtime as prohibited under subsection (b).

6 (e) Violations. Any employee of a facility that is subject  
7 to this Act may file a complaint with the Department of Labor  
8 regarding an alleged violation of this Section. The complaint  
9 must be filed within 45 days following the occurrence of the  
10 incident giving rise to the alleged violation. The Department  
11 of Labor must forward notification of the alleged violation to  
12 the Department of Human Services or the Department of Public  
13 Health, whichever is responsible for regulating the facility in  
14 question, and to the facility in question within 3 business  
15 days after the complaint is filed. The Department of Labor  
16 shall work with the facility to resolve the alleged violation.

17 (f) Proof of violation. Any violation of this Section must  
18 be proved by clear and convincing evidence that a nurse was  
19 required to work overtime against his or her will. The facility  
20 may defeat the claim of a violation by presenting clear and  
21 convincing evidence that an unforeseen emergent circumstance,  
22 which required overtime work, existed at the time the employee  
23 was required or compelled to work.

24 Section 15. The Department of Public Health Powers and  
25 Duties Law of the Civil Administrative Code of Illinois is

1 amended by adding Section 2310-12 as follows:

2 (20 ILCS 2310/2310-12 new)

3 Sec. 2310-12. Nurse mandated overtime prohibited.

4 (a) Definitions. As used in this Section:

5 "Mandated overtime" means work that is required by the  
6 Department in excess of an agreed-to, predetermined work shift.  
7 Time spent by nurses required to be available as a condition of  
8 employment in specialized units shall not be counted or  
9 considered in calculating the amount of time worked for the  
10 purpose of applying the prohibition against mandated overtime  
11 under subsection (b).

12 "Nurse" means any advanced practice nurse, registered  
13 professional nurse, or licensed practical nurse, as defined in  
14 the Nurse Practice Act, who receives an hourly wage and has  
15 direct responsibility to oversee or carry out nursing care or  
16 duties.

17 "Unforeseen emergent circumstance" means (i) any declared  
18 national, State, or municipal disaster or other catastrophic  
19 event, or any implementation of a disaster plan, that will  
20 substantially affect or increase the need for health care  
21 services or (ii) any circumstance in which patient care needs  
22 require specialized nursing skills through the completion of a  
23 procedure. An "unforeseen emergent circumstance" does not  
24 include situations in which the Department fails to have enough  
25 nursing staff to meet its usual and reasonably predictable

1 nursing needs.

2 (b) Mandated overtime prohibited. No nurse may be required  
3 to work mandated overtime except in the case of an unforeseen  
4 emergent circumstance when such overtime is required only as a  
5 last resort. Such mandated overtime shall not exceed 4 hours  
6 beyond an agreed-to, predetermined work shift.

7 (c) Off-duty period. When a nurse is mandated to work up to  
8 12 consecutive hours, the nurse must be allowed at least 8  
9 consecutive hours of off-duty time immediately following the  
10 completion of a shift.

11 (d) Retaliation prohibited. The Department may not  
12 discipline, discharge, or take any other adverse employment  
13 action against a nurse solely because the nurse refused to work  
14 mandated overtime as prohibited under subsection (b).

15 (e) Violations. Any employee of the Department of Public  
16 Health who is subject to this Section may file a complaint with  
17 the Department of Labor regarding an alleged violation of this  
18 Section. The complaint must be filed within 45 days following  
19 the occurrence of the incident giving rise to the alleged  
20 violation. The Department of Labor must forward notification of  
21 the alleged violation to the Department of Public Health within  
22 3 business days after the complaint is filed. The Department of  
23 Labor shall work with the Department of Public Health to  
24 resolve the alleged violation.

25 (f) Proof of violation. Any violation of this Section must  
26 be proved by clear and convincing evidence that a nurse was



1 required to work overtime against his or her will. The  
2 Department may defeat the claim of a violation by presenting  
3 clear and convincing evidence that an unforeseen emergent  
4 circumstance, which required overtime work, existed at the time  
5 the employee was required or compelled to work.

6 Section 20. The Department of Veterans Affairs Act is  
7 amended by adding Section 2.09 as follows:

8 (20 ILCS 2805/2.09 new)

9 Sec. 2.09. Nurse mandated overtime prohibited.

10 (a) Definitions. As used in this Section:

11 "Mandated overtime" means work that is required by a  
12 veterans home in excess of an agreed-to, predetermined work  
13 shift. Time spent by nurses required to be available as a  
14 condition of employment in specialized units shall not be  
15 counted or considered in calculating the amount of time worked  
16 for the purpose of applying the prohibition against mandated  
17 overtime under subsection (b).

18 "Nurse" means any advanced practice nurse, registered  
19 professional nurse, or licensed practical nurse, as defined in  
20 the Nurse Practice Act, who receives an hourly wage and has  
21 direct responsibility to oversee or carry out nursing care.

22 "Unforeseen emergent circumstance" means (i) any declared  
23 national, State, or municipal disaster or other catastrophic  
24 event, or any implementation of a facility's disaster plan,

1 that will substantially affect or increase the need for health  
2 care services or (ii) any circumstance in which patient care  
3 needs require specialized nursing skills through the  
4 completion of a procedure. An "unforeseen emergent  
5 circumstance" does not include situations in which a facility  
6 fails to have enough nursing staff to meet the usual and  
7 reasonably predictable nursing needs of its patients.

8 (b) Mandated overtime prohibited. No nurse may be required  
9 to work mandated overtime except in the case of an unforeseen  
10 emergent circumstance when such overtime is required only as a  
11 last resort. Such mandated overtime shall not exceed 4 hours  
12 beyond an agreed-to, predetermined work shift.

13 (c) Off-duty period. When a nurse is mandated to work up to  
14 12 consecutive hours, the nurse must be allowed at least 8  
15 consecutive hours of off-duty time immediately following the  
16 completion of a shift.

17 (d) Retaliation prohibited. No facility may discipline,  
18 discharge, or take any other adverse employment action against  
19 a nurse solely because the nurse refused to work mandated  
20 overtime as prohibited under subsection (b).

21 (e) Violations. Any employee of a facility that is subject  
22 to this Act may file a complaint with the Department of Labor  
23 regarding an alleged violation of this Section. The complaint  
24 must be filed within 45 days following the occurrence of the  
25 incident giving rise to the alleged violation. The Department  
26 of Labor must forward notification of the alleged violation to

1 the Department of Veterans' Affairs and to the facility in  
2 question within 3 business days after the complaint is filed.  
3 The Department of Labor shall work with the facility to resolve  
4 the alleged violation.

5 (f) Proof of violation. Any violation of this Section must  
6 be proved by clear and convincing evidence that a nurse was  
7 required to work overtime against his or her will. The facility  
8 may defeat the claim of a violation by presenting clear and  
9 convincing evidence that an unforeseen emergent circumstance,  
10 which required overtime work, existed at the time the employee  
11 was required or compelled to work.

12 Section 25. The Illinois Public Aid Code is amended by  
13 adding Section 12-4.37 as follows:

14 (305 ILCS 5/12-4.37 new)

15 Sec. 12-4.37. Nurse mandated overtime prohibited.

16 (a) Definitions. As used in this Section:

17 "Mandated overtime" means work that is required by the  
18 Department of Healthcare and Family Services in excess of an  
19 agreed-to, predetermined work shift. Time spent by nurses  
20 required to be available as a condition of employment in  
21 specialized units shall not be counted or considered in  
22 calculating the amount of time worked for the purpose of  
23 applying the prohibition against mandated overtime under  
24 subsection (b).

1       "Nurse" means any advanced practice nurse, registered  
2 professional nurse, or licensed practical nurse, as defined in  
3 the Nurse Practice Act, who receives an hourly wage and has  
4 direct responsibility to oversee or carry out nursing care or  
5 duties.

6       "Unforeseen emergent circumstance" means (i) any declared  
7 national, State, or municipal disaster or other catastrophic  
8 event, or any implementation of a disaster plan, that will  
9 substantially affect or increase the need for health care  
10 services or (ii) any circumstance in which patient care needs  
11 require specialized nursing skills through the completion of a  
12 procedure. An "unforeseen emergent circumstance" does not  
13 include situations in which the Department fails to have enough  
14 nursing staff to meet its usual and reasonably predictable  
15 nursing needs.

16       (b) Mandated overtime prohibited. No nurse may be required  
17 to work mandated overtime except in the case of an unforeseen  
18 emergent circumstance when such overtime is required only as a  
19 last resort. Such mandated overtime shall not exceed 4 hours  
20 beyond an agreed-to, predetermined work shift.

21       (c) Off-duty period. When a nurse is mandated to work up to  
22 12 consecutive hours, the nurse must be allowed at least 8  
23 consecutive hours of off-duty time immediately following the  
24 completion of a shift.

25       (d) Retaliation prohibited. The Department may not  
26 discipline, discharge, or take any other adverse employment

1 action against a nurse solely because the nurse refused to work  
2 mandated overtime as prohibited under subsection (b).

3 (e) Violations. Any employee of the Department who is  
4 subject to this Section may file a complaint with the  
5 Department of Labor regarding an alleged violation of this  
6 Section. The complaint must be filed within 45 days following  
7 the occurrence of the incident giving rise to the alleged  
8 violation. The Department of Labor must forward notification of  
9 the alleged violation to the Department of Healthcare and  
10 Family Services within 3 business days after the complaint is  
11 filed. The Department of Labor shall work with the Department  
12 of Healthcare and Family Services to resolve the alleged  
13 violation.

14 (f) Proof of violation. Any violation of this Section must  
15 be proved by clear and convincing evidence that a nurse was  
16 required to work overtime against his or her will. The  
17 Department of Healthcare and Family Services may defeat the  
18 claim of a violation by presenting clear and convincing  
19 evidence that an unforeseen emergent circumstance, which  
20 required overtime work, existed at the time the employee was  
21 required or compelled to work.

22 Section 30. The Unified Code of Corrections is amended by  
23 adding Section 3-6-2.10 as follows:

24 (730 ILCS 5/3-6-2.10 new)

1       Sec. 3-6-2.10. Nurse mandated overtime prohibited.

2       (a) Definitions. As used in this Section:

3       "Mandated overtime" means work that is required by a  
4 correctional facility regulated under this Code in excess of an  
5 agreed-to, predetermined work shift. Time spent by nurses  
6 required to be available as a condition of employment in  
7 specialized units shall not be counted or considered in  
8 calculating the amount of time worked for the purpose of  
9 applying the prohibition against mandated overtime under  
10 subsection (b).

11       "Nurse" means any advanced practice nurse, registered  
12 professional nurse, or licensed practical nurse, as defined in  
13 the Nurse Practice Act, who receives an hourly wage and has  
14 direct responsibility to oversee or carry out nursing care.

15       "Unforeseen emergent circumstance" means (i) any declared  
16 national, State, or municipal disaster or other catastrophic  
17 event, or any implementation of the disaster plan of a  
18 correctional facility regulated under this Code, that will  
19 substantially affect or increase the need for health care  
20 services or (ii) any circumstance in which patient care needs  
21 require specialized nursing skills through the completion of a  
22 procedure. An "unforeseen emergent circumstance" does not  
23 include situations in which a correctional facility fails to  
24 have enough nursing staff to meet the usual and reasonably  
25 predictable nursing needs of its patients.

26       (b) Mandated overtime prohibited. No nurse may be required

1 to work mandated overtime except in the case of an unforeseen  
2 emergent circumstance when such overtime is required only as a  
3 last resort. Such mandated overtime shall not exceed 4 hours  
4 beyond an agreed-to, predetermined work shift.

5 (c) Off-duty period. When a nurse is mandated to work up to  
6 12 consecutive hours, the nurse must be allowed at least 8  
7 consecutive hours of off-duty time immediately following the  
8 completion of a shift.

9 (d) Retaliation prohibited. No correctional facility may  
10 discipline, discharge, or take any other adverse employment  
11 action against a nurse solely because the nurse refused to work  
12 mandated overtime as prohibited under subsection (b).

13 (e) Violations. Any employee of a correctional facility  
14 that is subject to this Act may file a complaint with the  
15 Department of Labor regarding an alleged violation of this  
16 Section. The complaint must be filed within 45 days following  
17 the occurrence of the incident giving rise to the alleged  
18 violation. The Department of Labor must forward notification of  
19 the alleged violation to the Department of Corrections and to  
20 the correctional facility in question within 3 business days  
21 after the complaint is filed. The Department of Labor shall  
22 work with the correctional facility to resolve the alleged  
23 violation.

24 (f) Proof of violation. Any violation of this Section must  
25 be proved by clear and convincing evidence that a nurse was  
26 required to work overtime against his or her will. The

1 correctional facility may defeat the claim of a violation by  
2 presenting clear and convincing evidence that an unforeseen  
3 emergent circumstance, which required overtime work, existed  
4 at the time the employee was required or compelled to work.

5 Section 99. Effective date. This Act takes effect upon  
6 becoming law.