TESTIMONY
OF
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CONNECTICUT HOSPITAL ASSOCIATION
PUBLIC HEALTH COMMITTEE

THURSDAY, MARCH 14, 2002

SB 416, An Act Concerning Working Hours Of Certain Hospital Employees

Good afternoon Co-Chairs Senator Harp and Representative Eberle and members of the Public Health Committee. My name is Kim Hostetler, and I am Vice President and Chief of Staff for the Connecticut Hospital Association (CHA). I appreciate this opportunity to present testimony on **SB 416, An Act Concerning Working Hours Of Certain Hospital Employees**.

This bill would prohibit a hospital from requiring an hourly employee who is involved in direct patient care from working in excess of a predetermined, scheduled work shift, provided such work shift is determined and promulgated not less than forty-eight hours prior to the commencement of such scheduled work shift. The bill provides three exceptions to the prohibition. The prohibition does not apply: (1) to any employee participating in a surgical procedure until such procedure is completed, (2) to any employee working in a critical care unit until such employee is relieved by another employee who is commencing a scheduled work shift, and (3) in the case of an institutional emergency, including, but not limited to, adverse weather conditions, catastrophe or widespread illness, that in the opinion of the hospital administrator will significantly reduce the number of employees available for a scheduled work shift, provided the hospital administrator has made a good faith effort to mitigate the impact of such institutional emergency on the availability of employees. While we appreciate the inclusion of certain exceptions, CHA opposes this bill.

We have a well documented and worsening healthcare workforce shortage in Connecticut. It is impeding our hospitals from filling their current vacancies, and our future vacancies will be even more difficult to fill as we bear the full demographic brunt of our aging healthcare workforce

retiring out of the healthcare system just as aging baby boomers are flooding into it for care. Some would argue that to address the workforce shortage, we need legislation to prohibit the use of mandatory overtime. But if we didn't have a shortage problem, we wouldn't have an overtime problem. No hospital prefers to deal with chronic staff shortages through the use of overtime, voluntary or otherwise. It's not cost-effective and it burns out the staff. Mandatory overtime is not even used by over two-thirds of Connecticut hospitals. They have avoided it by employing a number of strategies, including:

- asking for volunteers;
- calling in staff who have elected to be called or accepted an "on call" incentive to be available for overtime;
- asking staff on the unit to arrange coverage;
- asking part-timers or per diem staff to pick up extra hours or shifts;
- drawing staff from a float pool or staffing pool;
- using traveler or agency staff; and
- requiring managers to cover.

To encourage volunteers, most of our hospitals are offering overtime incentives in addition to the premium pay that may also be available. They offer whatever "deals" they can – often involving time off from a future scheduled shift if an employee will stay in an emergency. Whenever possible, overtime is voluntary. When absolutely necessary, overtime is mandatory. The biggest users of mandatory overtime among Connecticut hospitals are those with union contracts that specify a mechanism for utilizing it.

While this bill recognizes the impossibility of an across-the-board prohibition of mandatory overtime in Connecticut hospitals by specifying certain exceptions, there are still patient care implications.

It does not address the "on call" issue of our operating rooms. While the bill includes an exception for surgical staff who must finish a surgical case, it does not address the fact that hospital operating rooms are routinely staffed during evenings, holidays and weekends by employees who are "on call." These are nurses and others who have typically worked a normal workweek, who are

paid an additional amount to be “on call” during evenings, holidays and weekends so that sufficient staff is available to respond to trauma or patient emergency. If requiring an “on call” staff person to fulfill their on call obligation is considered mandatory overtime, this bill would adversely impact the staffing of ORs and, consequently, the ability of hospitals to provide emergency surgery. The same applies for staff in the Post-Anesthesia Care Unit (PACU).

What is the definition of critical care unit and why is it different from other critical patient care areas? There is an exception for employees working in a critical care unit, but in today’s hospitals, virtually all patients are critically in need of care, whether or not they are assigned to designated critical care units.

How is “institutional emergency” defined? While it seems that the definition is broad and left to the opinion of the hospital administrator, how will we avoid complaints over differing definitions of institutional emergency?

How would complaints of infractions be investigated? What is the remedy? The bill does not address how and by whom a complaint of alleged violation would be investigated, nor what the remedy would be should a hospital be found in violation.

How might this bill hamper creativity or incentive in avoiding overtime? We already know that the biggest users of mandatory overtime today are the hospitals with union contracts specifying a mechanism for using it. There is no way to have mandatory overtime prohibition legislation without substantial exceptions. Once such exceptions are provided, have we encouraged them to be used? If circumstances are established under which it is acceptable as a matter of public policy to utilize mandatory overtime, might that not cause its usage to increase?

What is a good faith effort to mitigate the impact of such institutional emergency on the availability of employees? How will we avoid constant resource-draining complaints that a hospital has not made a good faith effort?

Connecticut hospitals know how damaging mandatory overtime can be to a workforce. It is a last resort measure and it is not even used at all by most hospitals. Managing the complex staffing needs of a 24x7 hospital must be the responsibility and right of the hospital. Staffing is an employment issue and must be left to employers to work out with their respective employees, so that variations in patient needs, staff needs and operational needs can be addressed appropriately. In the healthcare environment it is difficult to make overtime requirements predictable, but hospitals work hard to give as much notice of overtime as possible and to give employees a say in how it's assigned. Given the extremely competitive labor market, the employer who is most successful at minimizing disruptive and mandatory overtime will become the employer of choice. But adding legislation prohibiting mandatory overtime, even with the broad exceptions included in this bill, will add a layer of unnecessary complexity and the risk that many precious resources will be drained by making a process that is already successful at most hospitals subject to constant challenge and complaint.

Thank you.